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**STATE OF NORTH CAROLINA**

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**SESSION LAWS AND RESOLUTIONS**

**PASSED BY THE**

**1993 GENERAL ASSEMBLY**

**AT ITS**

**EXTRA SESSION 1994**

**BEGINNING ON**

**TUESDAY, THE EIGHTH DAY OF FEBRUARY, A.D. 1994**

**AND AT ITS**

**REGULAR SESSION 1994**

**BEGINNING ON**

**TUESDAY, THE TWENTY-FOURTH DAY OF MAY,  
A.D. 1994**

**HELD IN THE CITY OF RALEIGH**

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**ISSUED BY  
SECRETARY OF STATE RUFUS L. EDMISTEN**

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**PUBLISHED BY AUTHORITY**

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<sup>1</sup> Please note: Chapters 561 and 563 were ratified during the 1993 Regular Session of the 1993 General Assembly — see the 1993 Session Laws, Regular Session 1993.



# STATE OF NORTH CAROLINA

## PRESIDING OFFICERS OF THE 1993 GENERAL ASSEMBLY

DENNIS A. WICKER .....	President of the Senate .....	Lee
DANIEL T. BLUE, JR. ....	Speaker of the House of Representatives .....	Wake

---

## EXECUTIVE BRANCH

(Offices established by the Constitution, filled by  
election and comprising the Council of State)

JAMES B. HUNT, JR. ....	Governor .....	Wilson
DENNIS A. WICKER .....	Lieutenant Governor .....	Lee
RUFUS L. EDMISTEN .....	Secretary of State .....	Watauga
RALPH CAMPBELL, JR. ....	Auditor .....	Wake
HARLAN E. BOYLES .....	Treasurer .....	Wake
BOB R. ETHERIDGE .....	Superintendent of Public Instruction .....	Harnett
MICHAEL F. EASLEY .....	Attorney General .....	Brunswick
JAMES A. GRAHAM .....	Commissioner of Agriculture .....	Rowan
HARRY E. PAYNE, JR. ....	Commissioner of Labor .....	New Hanover
JAMES E. LONG .....	Commissioner of Insurance .....	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Hunt are carried in the appendix to this volume.

## 1993 GENERAL ASSEMBLY

## SENATE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
DENNIS A. WICKER . . . . .	President . . . . .	Sanford, Lee County
MARC BASNIGHT . . . . .	President Pro Tempore . . . . .	Manteo, Dare County
R. C. SOLES, JR. . . . .	Deputy President Pro Tempore . . . . .	Tabor City, Columbus County
SYLVIA M. FINK . . . . .	Principal Clerk . . . . .	Raleigh, Wake County
LEROY CLARK, JR. . . . .	Reading Clerk . . . . .	Wendell, Wake County
CECIL GOINS . . . . .	Sergeant-at-Arms . . . . .	Raleigh, Wake County

## SENATORS

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	MARC BASNIGHT . . . . .	Dare . . . . .	Manteo
2	FRANK W. BALLANCE, JR. . . . .	Warren . . . . .	Warrenton
3	BEVERLY M. PERDUE . . . . .	Craven . . . . .	New Bern
4	* JOHN CODINGTON (R) . . . . .	New Hanover . . . . .	Wilmington
4	** PATRICK J. BALLENTINE (R) . . . . .	New Hanover . . . . .	Wilmington
5	CHARLES W. ALBERTSON . . . . .	Duplin . . . . .	Beulaville
6	R. L. MARTIN . . . . .	Pitt . . . . .	Bethel
7	LUTHER HENRY JORDAN, JR. . . . .	New Hanover . . . . .	Wilmington
8	JOHN KERR . . . . .	Wayne . . . . .	Goldsboro
9	ED N. WARREN . . . . .	Pitt . . . . .	Greenville
10	ROY A. COOPER III . . . . .	Nash . . . . .	Rocky Mount
11	JAMES D. SPEED . . . . .	Franklin . . . . .	Louisburg
12	FRED FOLGER, JR. . . . .	Surry . . . . .	Mount Airy
12	A. P. SANDS III . . . . .	Rockingham . . . . .	Reidsville
13	WILBUR P. GULLEY . . . . .	Durham . . . . .	Durham
13	JEANNE H. LUCAS . . . . .	Durham . . . . .	Durham
14	JOSEPH E. JOHNSON . . . . .	Wake . . . . .	Raleigh
14	J. K. SHERRON, JR. . . . .	Wake . . . . .	Raleigh
15	ELAINE MARSHALL . . . . .	Harnett . . . . .	Lillington
16	HOWARD N. LEE . . . . .	Orange . . . . .	Chapel Hill
16	RUSSELL G. WALKER . . . . .	Randolph . . . . .	Asheboro
17	J. RICHARD CONDER . . . . .	Richmond . . . . .	Rockingham
17	AARON W. PLYLER . . . . .	Union . . . . .	Monroe
18	R. C. SOLES, JR. . . . .	Columbus . . . . .	Tabor City
19	ROBERT G. SHAW (R) . . . . .	Guilford . . . . .	Greensboro
20	IAN THEODORE "TED" KAPLAN . . . . .	Forsyth . . . . .	Winston-Salem
20	MARVIN M. WARD . . . . .	Forsyth . . . . .	Winston-Salem
21	GEORGE B. DANIEL . . . . .	Caswell . . . . .	Yanceyville
22	FLETCHER L. HARTSELL, JR. (R) . . . . .	Cabarrus . . . . .	Concord
23	PAUL S. SMITH (R) . . . . .	Rowan . . . . .	Salisbury
24	LURA S. TALLY . . . . .	Cumberland . . . . .	Fayetteville
25	DAVID HOYLE . . . . .	Gaston . . . . .	Dallas
26	AUSTIN M. ALLRAN (R) . . . . .	Catawba . . . . .	Hickory
27	DONALD R. KINCAID (R) . . . . .	Caldwell . . . . .	Lenoir
27	DAN R. SIMPSON (R) . . . . .	Burke . . . . .	Morganton
28	HERBERT LEE HYDE . . . . .	Buncombe . . . . .	Asheville
28	DENNIS J. WINNER . . . . .	Buncombe . . . . .	Asheville
29	CLARK PLEXICO . . . . .	Henderson . . . . .	Hendersonville
30	DAVID R. PARNELL . . . . .	Robeson . . . . .	Parkton
31	WILLIAM N. MARTIN . . . . .	Guilford . . . . .	Greensboro
32	MARY P. SEYMOUR . . . . .	Guilford . . . . .	Greensboro
33	JAMES F. RICHARDSON . . . . .	Mecklenburg . . . . .	Charlotte
34	T. L. ODOM . . . . .	Mecklenburg . . . . .	Charlotte
35	JOHN GERALD BLACKMON (R) . . . . .	Mecklenburg . . . . .	Charlotte
36	LINDA GUNTER . . . . .	Wake . . . . .	Cary
37	OLLIE HARRIS . . . . .	Cleveland . . . . .	Kings Mountain
38	BETSY L. COCHRANE (R) . . . . .	Davie . . . . .	Advance
39	JAMES FORRESTER (R) . . . . .	Gaston . . . . .	Stanley
40	LESLIE WINNER . . . . .	Mecklenburg . . . . .	Charlotte
41	C. R. EDWARDS . . . . .	Cumberland . . . . .	Fayetteville
42	ROBERT C. CARPENTER (R) . . . . .	Macon . . . . .	Franklin

\* Deceased March 1, 1994

\*\* Appointed March 25, 1994



## HOUSE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
DANIEL T. BLUE, JR. ....	Speaker .....	Raleigh, Wake County
MARIE W. COLTON .....	Speaker Pro Tempore .....	Asheville, Buncombe County
DENISE G. WEEKS .....	Principal Clerk .....	Willow Springs, Wake County
LISA F. SMITH .....	Reading Clerk .....	Raleigh, Wake County
OSCAR TYSON .....	Sergeant-at-Arms .....	Zebulon, Wake County

## REPRESENTATIVES

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	VERNON G. JAMES .....	Pasquotank .....	Elizabeth City
2	ZENO L. EDWARDS, JR. (R) .....	Beaufort .....	Washington
3	JOHN M. NICHOLS (R) .....	Craven .....	New Bern
4	JEAN ROUSE PRESTON (R) .....	Carteret .....	Emerald Isle
5	RONNIE SMITH .....	Carteret .....	Atlantic Beach
5	HOWARD J. HUNTER, JR. ....	Northampton .....	Conway
6	RICHARD EUGENE ROGERS .....	Martin .....	Williamston
7	DOCK M. BROWN .....	Halifax .....	Weldon
8	LINWOOD E. MERCER .....	Pitt .....	Farmville
9	CHARLES MC LAWHORN .....	Pitt .....	Winterville
10	VANCE ALPHIN .....	Duplin .....	Mt. Olive
11	PHILIP A. BADDOUR, JR. ....	Wayne .....	Goldsboro
12	EDWARD C. BOWEN .....	Sampson .....	Harrells
13	KAREN E. GOTTOVI .....	New Hanover .....	Wilmington
14	DEWEY HILL .....	Columbus .....	Whiteville
14	E. DAVID REDWINE .....	Brunswick .....	Shallotte
15	J. SAM ELLIS (R) .....	Wake .....	Garner
16	DOUGLAS Y. YONGUE .....	Scotland .....	Laurinburg
17	THEODORE J. KINNEY .....	Cumberland .....	Fayetteville
17	MARY E. MCALLISTER .....	Cumberland .....	Fayetteville
18	KENNETH OWEN SPEARS, JR. ....	Cumberland .....	Fayetteville
18	BILLY RICHARDSON .....	Cumberland .....	Fayetteville
19	CLARENCE P. STEWART .....	Harnett .....	Sanford
19	BOBBY RAY HALL .....	Lee .....	Sanford
20	BILLY J. CREECH (R) .....	Johnston .....	Clayton
21	DANIEL T. BLUE, JR. ....	Wake .....	Raleigh
22	RICHARD H. MOORE .....	Vance .....	Henderson
22	MICHAEL S. WILKINS .....	Person .....	Roxboro
23	PAUL LUEBKE .....	Durham .....	Durham
23	H. M. MICHAUX, JR. ....	Durham .....	Durham
23	GEORGE W. MILLER, JR. ....	Durham .....	Durham
24	ANNE C. BARNES .....	Orange .....	Chapel Hill
24	JOE HACKNEY .....	Orange .....	Chapel Hill
25	J. FRED BOWMAN .....	Alamance .....	Burlington
25	EDWARD NELSON COLE .....	Rockingham .....	Reidsville
25	BERTHA HOLT .....	Alamance .....	Burlington
26	HERMAN C. GIST .....	Guilford .....	Greensboro
27	STEVE WOOD (R) .....	Guilford .....	High Point
28	WILL BURTON .....	Guilford .....	Greensboro
29	JOANNE W. BOWIE (R) .....	Guilford .....	Greensboro
30	ARLIE F. CULP (R) .....	Randolph .....	Ramseur
31	RICHARD T. MORGAN (R) .....	Moore .....	Pinehurst
32	HUGH A. LEE .....	Richmond .....	Rockingham
33	FOYLE HIGHTOWER, JR. ....	Anson .....	Wadesboro
34	BOBBY GRIFFIN .....	Union .....	Monroe
35	CHARLOTTE A. GARDNER (R) .....	Rowan .....	Salisbury
36	JIM BLACK .....	Mecklenburg .....	Matthews
37	PAUL J. MCCRARY .....	Davidson .....	Lexington
38	HAROLD J. BRUBAKER (R) .....	Randolph .....	Asheboro
39	LYONS GRAY (R) .....	Forsyth .....	Winston-Salem
40	ANDERSON D. CROMER .....	Stokes .....	King
40	DAVID H. DIAMONT .....	Surry .....	Pilot Mountain
40	WADE F. WILMOTH .....	Watauga .....	Boone
41	JOHN W. BROWN (R) .....	Wilkes .....	Elkin
41	GEORGE M. HOLMES (R) .....	Yadkin .....	Hamptonville

42	FRANK MITCHELL (R)	Iredell	Olin
43	C. ROBERT BRAWLEY (R)	Iredell	Mooreville
44	JOHN R. GAMBLE, JR.	Lincoln	Lincolnton
45	CHERIE KILLIAN BERRY (R)	Catawba	Maiden
45	CHARLES R. PRESTON (R)	Catawba	Conover
46	DAVID T. FLAHERTY, JR. (R)	Caldwell	Lenoir
46	GREGG THOMPSON (R)	Mitchell	Spruce Pine
47	WALTER G. CHURCH, SR.	Burke	Valdese
48	JACK HUNT	Cleveland	Shelby
48	EDITH L. LUTZ	Cleveland	Lawndale
48	JOHN WEATHERLY (R)	Cleveland	Kings Mountain
49	ROBERT C. HUNTER	McDowell	Marion
50	LARRY T. JUSTUS (R)	Henderson	Hendersonville
51	MARIE W. COLTON	Buncombe	Asheville
51	NARVEL J. CRAWFORD	Buncombe	Asheville
51	MARTIN L. NESBITT	Buncombe	Asheville
52	CHARLES M. BEALL	Haywood	Clyde
52	LISTON B. RAMSEY	Madison	Marshall
53	THOMAS K. JENKINS	Macon	Franklin
54	JOHN B. McLAUGHLIN	Mecklenburg	Newell
55	DAVID G. BALMER (R)	Mecklenburg	Charlotte
56	MARTHA ALEXANDER	Mecklenburg	Charlotte
57	CONNIE WILSON (R)	Mecklenburg	Charlotte
58	RUTH M. EASTERLING	Mecklenburg	Charlotte
59	W. PETE CUNNINGHAM	Mecklenburg	Charlotte
60	HOWARD C. BARNHILL	Mecklenburg	Charlotte
61	BRAD MILLER	Wake	Raleigh
62	DAVID MINER (R)	Wake	Cary
63	JANE H. MOSLEY	Wake	Cary
64	BOB HENSLEY	Wake	Raleigh
65	AARON E. FUSSELL	Wake	Raleigh
66	ANNIE BROWN KENNEDY	Forsyth	Winston-Salem
67	WARREN (PETE) OLDHAM	Forsyth	Winston-Salem
68	W. M. IVES (R)	Transylvania	Brevard
69	J. SHAWN LEMMOND (R)	Mecklenburg	Matthews
70	MILTON F. FITCH, JR.	Wilson	Wilson
71	JOE MAVRETIC	Edgecombe	Tarboro
72	GENE ARNOLD (R)	Nash	Rocky Mount
73	PAUL W. SEXTON, SR. (R)	Rockingham	Stoneville
74	JULIA CRAVEN HOWARD (R)	Davie	Mocksville
75	ALEX WARNER	Cumberland	Hope Mills
76	W. W. DICKSON (R)	Gaston	Gastonia
77	CAROLYN RUSSELL (R)	Wayne	Goldsboro
78	JAMES P. GREEN, SR.	Vance	Henderson
79	WILLIAM WAINWRIGHT	Craven	Havelock
80	WILLIAM ROBERT GRADY (R)	Onslow	Jacksonville
81	TIMOTHY N. TALLENT (R)	Cabarrus	Concord
82	BOBBY HAROLD BARBEE (R)	Stanley	Locust
83	EUGENE MCCOMBS (R)	Rowan	Faith
84	MICHAEL DECKER (R)	Forsyth	Walkertown
85	RONNIE SUTTON	Robeson	Pembroke
86	WILLIAM T. CULPEPPER	Chowan	Edenton
87	FRANCES M. CUMMINGS	Robeson	Lumberton
88	THERESA ESPOSITO (R)	Forsyth	Winson-Salem
89	MARY JARRELL	Guilford	High Point
89	MAGGIE JEFFUS	Guilford	Greensboro
90	ROBERT C. HAYES (R)	Cabarrus	Concord
91	GEORGE S. ROBINSON (R)	Caldwell	Lenoir
92	ERIN J. KUCZMARSKI	Wake	Raleigh
93	BILLY W. JOYE, JR.	Gaston	Belmont
94	JERRY C. DOCKHAM (R)	Davidson	Denton
95	LEO DAUGHTRY (R)	Johnston	Smithfield
96	EDD NYE	Bladen	Elizabethtown
97	JERRY BRASWELL	Wayne	Goldsboro
98	THOMAS WRIGHT	New Hanover	Wilmington

## LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE MARC BASNIGHT,  
*Cochairman*

HOUSE SPEAKER DANIEL T. BLUE, JR., *Cochairman*

SEN. BETSY L. COCHRANE  
SEN. GEORGE B. DANIEL  
SEN. IAN THEODORE KAPLAN  
SEN. HOWARD N. LEE  
SEN. DAVID R. PARNELL  
SEN. A. P. SANDS III

REP. EDWARD C. BOWEN  
REP. LYONS GRAY  
REP. ROBERT J. HENSLEY, JR.  
REP. MARY E. MCALLISTER  
REP. MARTIN L. NESBITT, JR.  
REP. GEORGE S. ROBINSON

## LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR. ....	Legislative Administrative Officer
GERRY F. COHEN .....	Director of Bill Drafting
THOMAS L. COVINGTON .....	Director of Fiscal Research
M. GLENN NEWKIRK .....	Director of Legislative Automated Systems
TERRENCE D. SULLIVAN .....	Director of Research
J. MICHAEL MINSHEW .....	Building Superintendent and Chief of Security



**SESSION LAWS**  
**OF THE**  
**STATE OF NORTH CAROLINA**

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**EXTRA SESSION 1994**

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**S.B. 177**

**CHAPTER 1**

**AN ACT TO SET A FILING PERIOD FOR CANDIDACIES FOR POSITIONS AS SUPERIOR COURT JUDGE, DISTRICT COURT JUDGE, AND DISTRICT ATTORNEY RECENTLY PRECLEARED BY THE UNITED STATES DEPARTMENT OF JUSTICE, AND FOR OTHER OFFICES IN DISTRICTS AFFECTED BY THAT PRECLEARANCE.**

Whereas, the General Assembly in Chapter 321 of the 1993 Session Laws created new District 9A for superior court, district court, and district attorney, which received preclearance from the United States Department of Justice on February 14, 1994; and

Whereas, the General Assembly in Chapter 321 of the 1993 Session Laws created seven new superior court judgeships, which received preclearance from the United States Department of Justice on February 14, 1994; and

Whereas, the General Assembly in Chapter 321 of the 1993 Session Laws created several new district court judgeships to be effective for the 1994 election, only one of which, in District Court District 6B, received preclearance from the United States Department of Justice on February 14, 1994; and

Whereas, the filing period for district attorney ended on February 7, 1994, and a filing period must be enacted for new District 9A; and

Whereas, the filing period for district court judgeships ended on February 7, 1994, and a filing period must be enacted for the additional judge in District 6B and in District 9A, and filing fees refunded where a judgeship was transferred from District Court District 17A to District Court District 9A; and

Whereas, the filing period for superior court judgeships is set to expire on February 18, 1994, and an adequate filing period must be provided for the new seats in Districts 9A, 10A, 20B, and 27B, and for the new two-seat

Districts 3B, 15A, 17B, and 27B where one new seat was created in each district along with an existing judgeship open this year; and

Whereas, the period for absentee voting in the 1994 primary election must be reduced in order to allow an adequate time for candidate filing for offices covered by this act; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Notices of candidacy for district attorney in Prosecutorial District 9A must be filed with the State Board of Elections no earlier than 12:00 noon on the business day after this act is effective under section 5 of the Voting Rights Act of 1965, and not later than 12:00 noon on Friday, March 11, 1994.

**Sec. 2.** Notices of candidacy for district court judges in District Court Districts 6B and 9A must be filed with the State Board of Elections no earlier than 12:00 noon on the business day after this act is effective under section 5 of the Voting Rights Act of 1965, and not later than 12:00 noon on Friday, March 11, 1994.

**Sec. 2.1.** Notices of candidacy for superior court judge in Superior Court District 9A must be filed with the State Board of Elections no earlier than 12:00 noon on the business day after this act is effective under section 5 of the Voting Rights Act of 1965, and not later than 12:00 noon on Friday, March 11, 1994.

**Sec. 3.** In addition to any notices of candidacy for superior court which were validly filed during the period previously provided for, notices of candidacy for Superior Court Districts 3B, 9A, 10A, 15A, 17B, 20B, 25B, and 27B must be filed with the State Board of Elections no earlier than 12:00 noon on the business day after this act is effective under section 5 of the Voting Rights Act of 1965, and not later than 12:00 noon on Friday, March 11, 1994.

**Sec. 4.** (a) The provisions of G.S. 163-107.1 do not apply to any offices covered by this act in the 1994 primary.

(b) Notwithstanding the provisions of Article 20 or Article 21 of Chapter 163 of the General Statutes, the time by which absentee ballots are required to be printed and distributed for the 1994 primary only is reduced from 50 days to 40 days before the primary election. This subsection applies on a statewide basis and to all offices and to all elections held on that date.

**Sec. 5.** Notices of candidacy for 1994 validly filed in:

- (1) Superior Court Districts 3B, 9, 9A, 10A, 15A, 17B, 20B, 25B, and 27B prior to the filing deadline of February 18, 1994;
- (2) Prosecutorial Districts 9 and 17A prior to the filing deadline of February 7, 1994; and
- (3) District Court District 17A prior to the filing deadline of February 7, 1994

are not voided, but shall continue to apply. Except as to Superior Court District 9, Prosecutorial Districts 9 and 17A, and District Court District 17A, they may, however, be withdrawn as provided in G.S. 163-106(e) if such withdrawal is made before the filing deadline established by this act, and in such case the filing fee shall be refunded as provided by G.S. 163-

107(b). Provided, that notices of candidacy in District Court District 17A for the seat which is reallocated from District 17A to District 9A by Section 200.4(f) of Chapter 321 of the 1993 Session Laws are voided, and that person's filing fee shall be credited to any new filing under this act or refunded if the candidate does not file or is not eligible to file.

**Sec. 6.** This act is effective upon ratification, but may not be enforced except as provided by section 5 of the Voting Rights Act of 1965.

In the General Assembly read three times and ratified this the 17th day of February, 1994.

S.B. 84

## CHAPTER 2

AN ACT TO PROVIDE FOR DISMISSAL WITH LEAVE PURSUANT TO A DEFERRED PROSECUTION AGREEMENT AND THE REINSTITUTION OF PROCEEDINGS AGAINST A DEFENDANT THAT FAILS TO COMPLY WITH THE TERMS OF THE AGREEMENT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15A-932 reads as rewritten:

"§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found- found or pursuant to a deferred prosecution agreement.

(a) The prosecutor may enter a dismissal with leave for nonappearance when a defendant:

- (1) Cannot be readily found to be served with an order for arrest after the grand jury had indicted him; or
- (2) Fails to appear at a criminal proceeding at which his attendance is required, and the prosecutor believes the defendant cannot be readily found.

(a1) The prosecutor may enter a dismissal with leave pursuant to a deferred prosecution agreement entered into in accordance with the provisions of Article 82 of this Chapter.

(b) Dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement orally in open court or by filing the dismissal in writing with the clerk. If the dismissal for nonappearance or pursuant to a deferred prosecution agreement is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by filing written notice with the clerk.



(e) If the defendant fails to comply with the terms of a deferred prosecution agreement, the prosecutor may reinstitute the proceedings by filing written notice with the clerk."

Sec. 2. This act becomes effective March 1, 1994, and applies to deferred prosecution agreements entered into on or after that date.

In the General Assembly read three times and ratified this the 28th day of February, 1994.

H.B. 30

## CHAPTER 3

AN ACT TO REQUIRE THE CRIME VICTIMS COMPENSATION COMMISSION AND ITS DIRECTOR TO DENY A CLAIM OF A PERSON WHO WAS PARTICIPATING IN A FELONY OR A NONTRAFFIC MISDEMEANOR AT OR ABOUT THE TIME THE PERSON'S INJURY OCCURRED.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 15B-11 reads as rewritten:

"§ 15B-11. *Grounds for denial of claim or reduction of award.*

(a) An award of compensation ~~will~~ shall be denied if:

- (1) The claimant fails to file ~~his~~ an application for an award within one year after the date of the criminally injurious conduct that caused the injury or death for which ~~he~~ the claimant seeks the award;
- (2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;
- (3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;
- (4) The award would benefit the offender or ~~his~~ the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case; ~~or~~
- (5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar ~~facility~~ facility; ~~or~~
- (6) The victim was participating in a felony or a nontraffic misdemeanor at or about the time that the victim's injury occurred.

(b) A claim may be denied and an award of compensation may be reduced upon a finding of contributory misconduct by the claimant or a victim through whom ~~he~~ the claimant claims.



(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g).

(e) Compensation may not be awarded if the economic loss is less than one hundred dollars (\$100.00).

(f) Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars (\$200.00) per week.

(g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to, or the death of, that victim may not exceed twenty thousand dollars (\$20,000) in the aggregate in addition to allowable funeral, cremation, and burial expenses.

(h) The right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review."

**Sec. 2.** This act is effective upon ratification and applies to victims' claims that are pending or are in litigation on or after the date of ratification.

In the General Assembly read three times and ratified this the 28th day of February, 1994.

## H.B. 57

## CHAPTER 4

AN ACT TO AUTHORIZE, UNDER CERTAIN CONDITIONS, MAGISTRATES TO ISSUE DOMESTIC VIOLENCE RESTRAINING ORDERS AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 50B-2 reads as rewritten:

"§ 50B-2. *Institution of civil action; motion for emergency relief; temporary orders.*

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed *pro se*, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter.

(b) Emergency Relief. -- A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no *ex parte* order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding *pro se* and does not request an *ex parte* hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(c) *Ex parte* Orders. -- Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts provided, however, that a temporary order for custody *ex parte* and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. Upon the issuance of an *ex parte* order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting *pro se* requests *ex parte* relief, the Clerk of Superior Court shall schedule an *ex parte* hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the Clerk of Superior Court in any other county within the same judicial district who shall schedule an *ex parte* hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an *ex parte* order under this subsection, if the party is proceeding *pro se*, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(c1) *Ex parte* Orders by Authorized Magistrate. -- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief *ex parte*. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief *ex parte* the clerk of superior court is not available, the district court is not in session, and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody *ex parte* and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An *ex parte* order entered under this subsection shall expire and the magistrate shall schedule an *ex parte* hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. *Ex parte* orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) *Pro se* Forms. The Clerk of Superior Court of each county shall provide to *pro se* complainants all forms which are necessary or appropriate to enable them to proceed *pro se* pursuant to this section. The Clerk shall provide a supply of *pro se* forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

Sec. 2. G.S. 50B-3(a) reads as rewritten:

"(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;

- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from harassing or interfering with the other; and
- (10) Award costs and attorney's fees to either party."

**Sec. 3.** G.S. 50B-4 reads as rewritten:

"§ 50B-4. *Enforcement of orders.*

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. Said party may file and proceed with such motion *pro se*, using forms provided by the Clerk of Superior Court, Court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing *pro se* of a motion for contempt under this subsection, the ~~clerk~~ clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The ~~Clerk~~ Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(b) A law-enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from harassing or interfering with the victim, and if the victim, or someone acting on the victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes."

**Sec. 4.** G.S. 7A-292 reads as rewritten:

"§ 7A-292. *Additional powers of magistrates.*

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

- (1) To administer oaths;

- (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
- (3) When authorized by the chief district judge, to take depositions and examinations before trial;
- (4) To issue subpoenas and capiases valid throughout the county;
- (5) To take affidavits for the verification of pleadings;
- (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;
- (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
- (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- (10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
- (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15; and G.S. 156-15."

**Sec. 5.** This act becomes effective May 1, 1994 and applies to motions for emergency relief from domestic violence filed on or after that date.

In the General Assembly read three times and ratified this the 2nd day of March, 1994.

H.B. 34

## CHAPTER 5

AN ACT TO ALLOW EVIDENCE OF A LACK OF SEAT BELT USE TO BE ADMITTED IN A CRIMINAL OR CIVIL PROCEEDING TO ESTABLISH A JUSTIFICATION FOR THE STOP OF A VEHICLE, THE SAME AS IN ALL OTHER MOTOR VEHICLE LAW VIOLATIONS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-135.2A(d) reads as rewritten:

"(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this ~~section~~ section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers."

**Sec. 2.** This act is effective upon ratification and applies to any trial, action, or proceeding commenced on or after the effective date of this act.

In the General Assembly read three times and ratified this the 3rd day of March, 1994.

S.B. 176

## CHAPTER 6

AN ACT TO ALLOW A DISTRICT COURT JUDGESHIP TO BE ACTIVATED IN DISTRICT COURT DISTRICT 10, BECAUSE APPROVAL UNDER SECTION 5 OF THE VOTING RIGHTS ACT IS



NOT REQUIRED IN THAT DISTRICT, AND IN DISTRICT 30 WHERE APPROVAL HAS BEEN OBTAINED, AND TO DEAL WITH THE CASE OF FURTHER PARTIAL PRECLEARANCE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 200.6(c) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(c) Subsections (a) and (b) of this section become effective November 1, 1993, or fifteen days after the date upon which those subsections are approved under Section 5 of the Voting Rights Act of 1965, whichever is ~~later~~, later, except that as to the additional district court judge in District Court District 10 authorized by subsections (a) and (b) of this section, those subsections become effective March 1, 1994."

**Sec. 2.** Section 200.6(c) of Chapter 321 of the 1993 Session Laws, as amended by Section 1 of this act, reads as rewritten:

"(c) Subsections (a) and (b) of this section become effective November 1, 1993, or fifteen days after the date upon which those subsections are approved under Section 5 of the Voting Rights Act of 1965, whichever is later, except that as to the additional district court judge judges in District Court ~~District 10~~ Districts 10 and 30 authorized by subsections (a) and (b) of this section, those subsections become effective March 1, 1994. If additional judges authorized by subsection (a) of this section, but not all the judges authorized by that subsection, are approved under section 5 of the Voting Rights Act of 1965, then as to those additional judges, subsections (a) and (b) of this section become effective 15 days after the date of approval."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of March, 1994.

H.B. 27

## CHAPTER 7

AN ACT TO PROVIDE THAT A COURT MAY ORDER THAT JUVENILE RECORDS OF JUVENILES ADJUDICATED OR CONVICTED OF CLASS A - E FELONIES MAY BE USED AT A SUBSEQUENT CRIMINAL TRIAL EITHER IN THE GUILT PHASE OR TO PROVE AN AGGRAVATING FACTOR AT SENTENCING.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 7A-675(a) reads as rewritten:

"(a) The clerk of superior court shall maintain a complete record of all juvenile cases filed in his the clerk's office to be known as the juvenile record, which shall be withheld from public inspection ~~and and~~, except as provided in this subsection, may be examined only by order of the judge. ~~judge, except that the juvenile, his parent, guardian, custodian, or other authorized representative of the juvenile shall have a right to examine the juvenile's record.~~ The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of

the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the judge.

The following persons may examine the juvenile's record without an order of the judge:

- (1) The juvenile, the juvenile's parent, guardian, or custodian, or another authorized representative of the juvenile.
- (2) The prosecutor in a subsequent criminal proceeding against the juvenile.

The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The record may be so used only by order of the judge in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible."

**Sec. 2.** G.S. 7A-676(b) reads as rewritten:

"(b) Any person who has attained the age of 16 years may file a petition in the court where ~~he~~ the person was adjudicated delinquent for expunction of all records of that adjudication provided:

- (1) The offense for which ~~he~~ the person was adjudicated would have been a crime other than a Class A, B, C, D, or E felony if committed by an adult.
- (2) The person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

Records relating to an adjudication for an offense that would be a Class A, B, C, D, or E felony if committed by an adult shall not be expunged."

**Sec. 3.** G.S. 8C-1, Rule 404(b) reads as rewritten:

"(b) Other crimes, wrongs, or acts. -- Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. Admissible evidence may include evidence of an offense committed by a juvenile if it would have been a Class A, B, C, D, or E felony if committed by an adult."

**Sec. 4.** G.S. 15A-1340.4(a)(1) reads as rewritten:

"(1) Aggravating factors:

- a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- c. The defendant was hired or paid to commit the offense.

- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.
- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.
- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced. For the purpose of this subdivision, a prior conviction includes an adjudication of delinquency for an offense that would be a Class A, B, C, D, or E felony if committed by an adult.
- p. The offense involved the sale or delivery of a controlled substance to a minor.
- q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.



- r. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial."

Sec. 5. G.S. 15A-2000(e) reads as rewritten:

"(e) Aggravating Circumstances. -- Aggravating circumstances which may be considered shall be limited to the following:

- (1) The capital felony was committed by a person lawfully incarcerated.
- (2) The defendant had been previously convicted of another capital ~~felony~~ felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.
- (3) The defendant had been previously convicted of a felony involving the use or threat of violence to the ~~person~~ person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.
- (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.
- (6) The capital felony was committed for pecuniary gain.
- (7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- (8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.
- (9) The capital felony was especially heinous, atrocious, or cruel.
- (10) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- (11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which

included the commission by the defendant of other crimes of violence against another person or persons."

Sec. 6. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D, or E felony if committed by an adult."

Sec. 7. Section 6 of this act becomes effective on the date that G.S. 15A-1340.16 becomes effective and applies to offenses committed on or after that date. The remainder of this act becomes effective May 1, 1994. Sections 1, 2, 4, and 5 of this act apply to offenses committed on or after that date. Section 3 of this act applies to trials begun on or after that date.

In the General Assembly read three times and ratified this the 8th day of March, 1994.

H.B. 53

## CHAPTER 8

AN ACT TO PROVIDE THAT A DEFENDANT, AFTER A FINDING OF PROBABLE CAUSE OR INDICTMENT FOR COMMITTING INDECENT LIBERTIES WITH A CHILD FIFTEEN YEARS OLD OR YOUNGER WHICH INVOLVES A SEX OFFENSE, SHALL BE TESTED FOR CERTAIN SEXUALLY TRANSMITTED INFECTIONS UPON THE REQUEST OF THE VICTIM AND TO ADD HERPES TO THE LIST OF SEXUALLY TRANSMITTED INFECTIONS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse or~~ intercourse, an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or less, or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years old, the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

- (1) Chlamydia;
- (2) Gonorrhea;
- (3) Hepatitis B;
- (4) Herpes;
- ~~(4)~~ (5) HIV; and
- ~~(5)~~ (6) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

Sec. 2. This act becomes effective January 1, 1995, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 10th day of March, 1994.

H.B. 74

## CHAPTER 9

AN ACT TO ADD TO THE CONDITION THAT A PROBATIONER PURSUE A COURSE OF STUDY OR TRAINING BY REQUIRING THE PROBATIONER TO ABIDE BY THE RULES OF THE INSTITUTION PROVIDING THE EDUCATION OR TRAINING.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. -- As regular conditions of probation, a defendant must:

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
- (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
- (6) Pay a supervision fee as specified in subsection (c1).
- (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
- (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
- (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).
- (10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.
- (11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation

pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

Sec. 2. This act becomes effective May 1, 1994.

In the General Assembly read three times and ratified this the 10th day of March, 1994.

S.B. 151

## CHAPTER 10

## AN ACT TO REDUCE THE UNEMPLOYMENT INSURANCE TAX RATE.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 96-9(b)(1) reads as rewritten:

"(1) ~~Except as provided in subsection (d) hereof, each employer shall pay contributions with respect to employment during any calendar year prior to January 1, 1955, as required by this Chapter prior to such January 1, 1955, and each employer shall pay contributions equal to two and seven tenths percent (2.7%) of wages paid by him during the calendar year 1955 and each year thereafter with respect to employment occurring after December 31, 1954, which shall be deemed the standard rate of contributions payable by each employer except as provided herein. Provided that except as provided in subsection (d) hereof, each employer shall pay contributions equal to two and twenty-five hundredths percent (2.25%) of wages paid by him during the calendar year 1987 and each year thereafter with respect to employment occurring after December 31, 1986, which shall be deemed the standard beginning rate of contributions payable by each employer. The standard beginning rate of contributions for an employer is a percentage of wages paid by the employer during a calendar year for employment occurring during that year. The rate is determined in accordance with the following table:~~

<u>Percentage</u>	<u>Date After Which Employment Occurs</u>
<u>2.25%</u>	<u>December 31, 1986</u>
<u>1.8</u>	<u>December 31, 1993."</u>

Sec. 2. G.S. 96-9(b)(3) reads as rewritten:

"(3) a. through c. Repealed by Session Laws 1977, c. 727, s. 39.

d. Rate schedule A,B,C,D,E,F,G,H, or I appearing on the line opposite the fund ratio in the following Fund Ratio Schedules table shall be applicable in determining and assigning each eligible employer's contribution rate for the calendar year immediately following the computation date. The fund ratio is the total amount available for benefits in the Unemployment Insurance Fund on the computation date divided by the total amount of the taxable payroll of all subject employers for the 12-month period ending June 30 preceding the computation date.

#### FUND RATIO SCHEDULES

<u>When the Fund Ratio Is:</u>		<u>Applicable</u>
<u>As Much As</u>	<u>But Less Than</u>	<u>Schedule</u>
----	<u>2.5%</u>	<u>A</u>
<u>2.5%</u>	<u>3.5%</u>	<u>B</u>
<u>3.5%</u>	<u>4.5%</u>	<u>C</u>
<u>4.5%</u>	<u>5.5%</u>	<u>D</u>
<u>5.5%</u>	<u>6.5%</u>	<u>E</u>
<u>6.5%</u>	<u>7.5%</u>	<u>F</u>
<u>7.5%</u>	<u>8.5%</u>	<u>G</u>
<u>8.5%</u>	<u>9.5%</u>	<u>H</u>
<u>9.5% and in excess thereof</u>		<u>I</u>

#### FUND RATIO SCHEDULES

<u>When the Fund Ratio Is:</u>		<u>Applicable</u>
<u>As Much As</u>	<u>But Less Than</u>	<u>Schedule</u>
----	<u>2.0%</u>	<u>A</u>
<u>2.0%</u>	<u>3.0</u>	<u>B</u>
<u>3.0%</u>	<u>4.0%</u>	<u>C</u>
<u>4.0%</u>	<u>5.0%</u>	<u>D</u>
<u>5.0%</u>	<u>6.0%</u>	<u>E</u>
<u>6.0%</u>	<u>7.0%</u>	<u>F</u>
<u>7.0%</u>	<u>8.0%</u>	<u>G</u>
<u>8.0%</u>	<u>9.0%</u>	<u>H</u>
<u>9.0% and in excess thereof</u>		<u>I</u>

d1. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. The Until January 1, 1994, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the



following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by ~~the~~ this Experience Rating Formula table shall be reduced by thirty percent (30%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date.

### EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much But Less

As

Than

Rate Schedules (%)

		A	B	C	D	E	F	G	H	I
----	0.2%	2.70	2.70	2.70	2.70	2.70	2.70	2.50	2.30	2.10
0.2%	0.4%	2.70	2.70	2.70	2.70	2.70	2.50	2.30	2.10	1.90
0.4%	0.6%	2.70	2.70	2.70	2.70	2.50	2.30	2.10	1.90	1.70
0.6%	0.8%	2.70	2.70	2.70	2.50	2.30	2.10	1.90	1.70	1.50
0.8%	1.0%	2.70	2.70	2.50	2.30	2.10	1.90	1.70	1.50	1.30
1.0%	1.2%	2.70	2.50	2.30	2.10	1.90	1.70	1.50	1.30	1.10
1.2%	1.4%	2.50	2.30	2.10	1.90	1.70	1.50	1.30	1.10	0.90
1.4%	1.6%	2.30	2.10	1.90	1.70	1.50	1.30	1.10	0.90	0.80
1.6%	1.8%	2.10	1.90	1.70	1.50	1.30	1.10	0.90	0.80	0.70
1.8%	2.0%	1.90	1.70	1.50	1.30	1.10	0.90	0.80	0.70	0.60
2.0%	2.2%	1.70	1.50	1.30	1.10	0.90	0.80	0.70	0.60	0.50
2.2%	2.4%	1.50	1.30	1.10	0.90	0.80	0.70	0.60	0.50	0.40
2.4%	2.6%	1.30	1.10	0.90	0.80	0.70	0.60	0.50	0.40	0.30
2.6%	2.8%	1.10	0.90	0.80	0.70	0.60	0.50	0.40	0.30	0.20
2.8%	3.0%	0.90	0.80	0.70	0.60	0.50	0.40	0.30	0.20	0.15
3.0%	3.2%	0.80	0.70	0.60	0.50	0.40	0.30	0.20	0.15	0.10
3.2%	3.4%	0.70	0.60	0.50	0.40	0.30	0.20	0.15	0.10	0.09
3.4%	3.6%	0.60	0.50	0.40	0.30	0.20	0.15	0.10	0.09	0.08
3.6%	3.8%	0.50	0.40	0.30	0.20	0.15	0.10	0.09	0.08	0.07
3.8%	4.0%	0.40	0.30	0.20	0.15	0.10	0.09	0.08	0.07	0.06
4.0%	4.2%	0.30	0.20	0.15	0.10	0.09	0.08	0.07	0.06	0.05
4.2%	4.4%	0.20	0.15	0.10	0.09	0.08	0.07	0.06	0.05	0.04
4.4%	4.6%	0.15	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03
4.6%	4.8%	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03	0.02
4.8%	5.0%	0.09	0.08	0.07	0.06	0.05	0.04	0.03	0.02	0.01
5.0%	5.2%	0.08	0.07	0.06	0.05	0.04	0.03	0.02	0.01	0.01
5.2%	5.4%	0.07	0.06	0.05	0.04	0.03	0.02	0.01	0.01	0.01
5.4%	5.6%	0.06	0.05	0.04	0.03	0.02	0.01	0.01	0.01	0.01
5.6%	5.8%	0.05	0.04	0.03	0.02	0.01	0.01	0.01	0.01	0.01
5.8%	6.0%	0.04	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01
6.0%	6.2%	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01
6.2%	6.4%	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
6.4% & Over		0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

d2. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account

has a credit balance. Beginning January 1, 1994, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date.

### EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much But Less

As	Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70	2.70	2.70	2.70	2.70	2.50	2.30	2.10	1.90
0.2%	0.4%	2.70	2.70	2.70	2.70	2.50	2.30	2.10	1.90	1.70
0.4%	0.6%	2.70	2.70	2.70	2.50	2.30	2.10	1.90	1.70	1.50
0.6%	0.8%	2.70	2.70	2.50	2.30	2.10	1.90	1.70	1.50	1.30
0.8%	1.0%	2.70	2.50	2.30	2.10	1.90	1.70	1.50	1.30	1.10
1.0%	1.2%	2.50	2.30	2.10	1.90	1.70	1.50	1.30	1.10	0.90
1.2%	1.4%	2.30	2.10	1.90	1.70	1.50	1.30	1.10	0.90	0.80
1.4%	1.6%	2.10	1.90	1.70	1.50	1.30	1.10	0.90	0.80	0.70
1.6%	1.8%	1.90	1.70	1.50	1.30	1.10	0.90	0.80	0.70	0.60
1.8%	2.0%	1.70	1.50	1.30	1.10	0.90	0.80	0.70	0.60	0.50
2.0%	2.2%	1.50	1.30	1.10	0.90	0.80	0.70	0.60	0.50	0.40
2.2%	2.4%	1.30	1.10	0.90	0.80	0.70	0.60	0.50	0.40	0.30
2.4%	2.6%	1.10	0.90	0.80	0.70	0.60	0.50	0.40	0.30	0.20
2.6%	2.8%	0.90	0.80	0.70	0.60	0.50	0.40	0.30	0.20	0.15
2.8%	3.0%	0.80	0.70	0.60	0.50	0.40	0.30	0.20	0.15	0.10
3.0%	3.2%	0.70	0.60	0.50	0.40	0.30	0.20	0.15	0.10	1.09
3.2%	3.4%	0.60	0.50	0.40	0.30	0.20	0.15	0.10	0.09	0.08
3.4%	3.6%	0.50	0.40	0.30	0.20	0.15	0.10	0.09	0.08	0.07
3.6%	3.8%	0.40	0.30	0.20	0.15	0.10	0.09	0.08	0.07	0.06
3.8%	4.0%	0.30	0.20	0.15	0.10	0.09	0.08	0.07	0.06	0.05
4.0%	4.2%	0.20	0.15	0.10	0.09	0.08	0.07	0.06	0.05	0.04
4.2%	4.4%	0.15	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03
4.4%	4.6%	0.10	0.09	0.08	0.07	0.06	0.05	0.04	0.03	0.02
4.6%	4.8%	0.09	0.08	0.07	0.06	0.05	0.04	0.03	0.02	0.01
4.8%	5.0%	0.08	0.07	0.06	0.05	0.04	0.03	0.02	0.01	0.01
5.0%	5.2%	0.07	0.06	0.05	0.04	0.03	0.02	0.01	0.01	0.01
5.2%	5.4%	0.06	0.05	0.04	0.03	0.02	0.01	0.01	0.01	0.01
5.4%	5.6%	0.05	0.04	0.03	0.02	0.01	0.01	0.01	0.01	0.01
5.6%	5.8%	0.04	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01
5.8%	6.0%	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01
6.0%	6.2%	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
6.2% &										
Over		0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

- e. Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

**RATE SCHEDULE FOR OVERDRAWN ACCOUNTS  
BEGINNING WITH THE CALENDAR YEAR 1978**

When the Debit Ratio Is:		
As Much As	But Less Than	Assigned Rate
0.0%	0.3%	2.9%
0.3	0.6	3.1
0.6	0.9	3.3
0.9	1.2	3.5
1.2	1.5	3.7
1.5	1.8	3.9
1.8	2.1	4.1
2.1	2.4	4.3
2.4	2.7	4.5
2.7	3.0	4.7
3.0	3.3	4.9
3.3	3.6	5.1
3.6	3.9	5.3
3.9	4.2	5.5
4.2 and over		5.7

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding.

- f. The computation date for all contribution rates shall be August 1 of the calendar year preceding the calendar year with respect to which such rates are effective.
- g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to his account, and such voluntary contributions when made shall for all intents and purposes be deemed 'contributions required' as said term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the Commission pursuant to G.S. 96-9(c)(3) herein, of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to his account as of the previous July 31. Provided, however, any voluntary contribution made as provided herein after July 31 of any year shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any



condition stipulated in or made a part of such voluntary contribution by any employer.

- h. If, within the calendar month in which the computation date occurs, the Commission finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the Commission finds incorrect or insufficient, the Commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of such notice, the Commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.
- i. Repealed by Session Laws 1987, c. 17, s. 5.
- j. A tax is imposed upon contributions at the rate of twenty percent (20%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the contributions. The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Reserve Fund equals or exceeds one hundred sixty-three million three hundred forty-nine thousand dollars (\$163,349,000), which is one percent (1%) of taxable wages for calendar year 1984. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes is governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this subpart shall be credited to the Employment Security Commission Reserve Fund, and refunds of the taxes shall be paid from the same Fund. Any interest or penalties collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest or penalties refunded on taxes imposed by this subpart shall be paid from the same Fund."

Sec. 3. G.S. 96-9(b)(3)d1. is repealed.

Sec. 4. Section 3 of this act becomes effective January 1, 1997. The remainder of this act is effective upon ratification and applies to quarters beginning on or after January 1, 1994.

In the General Assembly read three times and ratified this the 10th day of March, 1994.

AN ACT TO REPEAL THE PROVISION IN THE STRUCTURED SENTENCING ACT THAT WOULD HAVE PROVIDED THAT POSSESSION OF LESS THAN ONE GRAM OF COCAINE WAS NOT A FELONY AND TO PROVIDE FOR DEFERRED PROCEEDINGS AND EXPUNCTION OF RECORDS FOR FIRST-TIME SIMPLE POSSESSION OF LESS THAN ONE GRAM OF COCAINE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 1358.1 of Chapter 539 of the 1993 Session Laws is repealed.

**Sec. 1.1.** G.S. 90-96 reads as rewritten:

"§ 90-96. *Conditional discharge and expunction of records for first offense.*

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Human Resources. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the 'North Carolina Controlled Substances Act', Article 5, Chapter 90, the 'North Carolina Toxic Vapors Act', Article 5A, Chapter 90, or the 'Drug Paraphernalia Act', Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Human Resources pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase 'failure to complete successfully the prescribed program of instruction at a drug education school' includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the ~~misdemeanor~~ offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the ~~misdemeanor~~ offense in question or during the period of probation following the decision to defer further proceedings on the ~~misdemeanor~~ offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,



shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a *nolle prosequi*, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or a (ii) felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Human Resources, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the ~~misdemeanor~~ offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The

information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

**Sec. 2.** This act becomes effective May 1, 1994.

In the General Assembly read three times and ratified this the 14th day of March, 1994.

H.B. 32

## CHAPTER 12

AN ACT TO REQUIRE THE CLERK OF SUPERIOR COURT TO INCLUDE THE NAMES OF ANY VICTIMS IN THE INFORMATION ATTACHED TO A PRISONER'S COMMITMENT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 148-59 reads as rewritten:

"§ 148-59. *Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.*

The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Parole Commission shall by regulations prescribe, which information shall contain, among other things, the following:

- (1) The court in which the prisoner was tried;
- (2) The name of the prisoner and of all codefendants;
- (3) The date or session when the prisoner was tried;
- (4) The offense with which the prisoner was charged and the offense for which convicted;
- (5) The judgment of the court and the date of the beginning of the sentence;
- (6) The name and address of the presiding judge;
- (7) The name and address of the prosecuting solicitor;
- (8) The name and address of private prosecuting attorney, if any;
- (9) The name and address of the arresting officer; ~~and~~
- (10) All available information of the previous criminal record of the ~~prisoner.~~ prisoner; and
- (11) For all Class G or more serious felonies, the names and addresses of the following persons, where the presiding judge makes a finding of such facts:
  - a. Any victims of the offense for which the prisoner was convicted;
  - b. The parent or legal guardian of any minor victims of the offense for which the prisoner was convicted; and
  - c. The next of kin of any homicide victims of the offense for which the prisoner was convicted.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Department of Correction, together with any additional information in the possession of such prison

authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge."

Sec. 2. G.S. 148-59, as amended by Section 50 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 148-59. (*Effective January 1, 1995*) *Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.*

The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Post-Release Supervision and Parole Commission shall by regulations prescribe, which information shall contain, among other things, the following:

- (1) The court in which the prisoner was tried;
- (2) The name of the prisoner and of all codefendants;
- (3) The date or session when the prisoner was tried;
- (4) The offense with which the prisoner was charged and the offense for which convicted;
- (5) The judgment of the court and the date of the beginning of the sentence;
- (6) The name and address of the presiding judge;
- (7) The name and address of the prosecuting solicitor;
- (8) The name and address of private prosecuting attorney, if any;
- (9) The name and address of the arresting officer; and
- (10) All available information of the previous criminal record of the ~~prisoner, prisoner; and~~
- (11) For all Class G or more serious felonies, the names and addresses of the following persons, where the presiding judge makes a finding of such facts:
  - a. Any victims of the offense for which the prisoner was convicted;
  - b. The parent or legal guardian of any minor victims of the offense for which the prisoner was convicted; and
  - c. The next of kin of any homicide victims of the offense for which the prisoner was convicted.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Department of Correction, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge."

Sec. 3. This act becomes effective May 1, 1994, except that Section 2 of this act becomes effective at the same time that Chapter 538 of the 1993 Session Laws becomes effective.



In the General Assembly read three times and ratified this the 14th day of March, 1994.

H.B. 11

## CHAPTER 13

AN ACT TO PROHIBIT A PERSON WHO WAS ACQUITTED OF CERTAIN CRIMINAL OFFENSES BY REASON OF INSANITY OR A PERSON DETERMINED TO BE INCAPABLE TO PROCEED FROM POSSESSING A FIREARM OR A WEAPON OF DEATH AND MASS DESTRUCTION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 54A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-415.3. Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited.

(a) It is unlawful for the following persons to purchase, own, possess, or have in the person's custody, care, or control, any firearm or any weapon of mass death and destruction as defined by G.S. 14-288.8(c):

(1) A person who has been acquitted by reason of insanity of any crime set out in G.S. 14-415.1(b) or any violation of G.S. 14-33(b)(1), 14-33(b)(8), or 14-34.

(2) A person who has been determined to lack capacity to proceed as provided in G.S. 15A-1002 for any crime set out in G.S. 14-415.1(b) or any violation of G.S. 14-33(b)(1), 14-33(b)(8), or 14-34.

(b) A violation of this section is a Class H felony. Any firearm or weapon of mass death and destruction lawfully seized for a violation of this section shall be forfeited to the State and disposed of as provided in G.S. 15-11.1."

**Sec. 2.** This act becomes effective May 1, 1994. The criminal violation created by this act applies to offenses committed on or after the effective date of this act.

In the General Assembly read three times and ratified this the 15th day of March, 1994.

H.B. 55

## CHAPTER 14

AN ACT TO MAKE TECHNICAL AMENDMENTS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS RELATING TO STRUCTURED SENTENCING, MISDEMEANORS, AND FELONIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 7A-273(1), as amended by Section 35 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(1) In infraction cases, cases in which the maximum penalty that can be imposed is not more than fifty dollars (\$50.00), exclusive of

costs, or in Class 3 ~~misdemeanors~~ ~~misdemeanors~~, other than the types of ~~offenses~~ ~~infractions and misdemeanors~~ specified in subdivision (2) of this section, to accept guilty pleas or admissions of responsibility and enter judgment;"

Sec. 2. G.S. 14-3(a), as amended by Section 7 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b) and (c), every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General ~~Statutes~~ Statutes:

- (1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;
- (2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and
- (3) If that maximum punishment is 30 days or less imprisonment or only a fine, it is a Class 3 misdemeanor.

Misdemeanors that have punishments for one or more counties or cities pursuant to a local act of the General Assembly that are different from the generally applicable punishment are classified pursuant to this subsection if not otherwise specifically classified."

Sec. 3. G.S. 14-33(b), as amended by Section 16 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

- (1) Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon; ~~or~~
- (2) Assaults a female, he being a male person at least 18 years of age; ~~or~~
- (3) Assaults a child under the age of 12 years; ~~or~~
- (4) through (7). Repealed by Session Laws 1991, c. 525, ~~s. 1~~, s. 1;
- (8) Assaults an officer or employee of the State or of any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official ~~duties~~ duties; ~~or~~
- (9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A 'sports official' is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A 'sports event' includes any interscholastic or intramural athletic activity in a primary, middle, junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or nonprofit

organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State."

**Sec. 3.1.** G.S. 14-72.3(c) reads as rewritten:

"(c) Violation of this section is a ~~misdemeanor punishable by a fine of not more than one hundred dollars (\$100.00), imprisonment for not more than thirty days, or both.~~ Class 3 misdemeanor."

**Sec. 3.2.** G.S. 14-72.4(c) reads as rewritten:

"(c) A violation of this section is a ~~misdemeanor punishable by a fine not to exceed three hundred dollars (\$300.00), imprisonment not to exceed six months, or both, in the discretion of the court.~~ Class 2 misdemeanor."

**Sec. 3.3.** G.S. 14-82 reads as rewritten:

"§ 14-82. *Taking horses, mules, or dogs for temporary purposes.*

If any person shall unlawfully take and carry away any horse, gelding, mare, mule, or dog, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of a ~~misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both.~~ Class 2 misdemeanor."

**Sec. 4.** (a) Section 164 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 14-269.2 reads as rewritten:

"§ 14-269.2. *Weapons on campus or other educational property.*

(a) The following definitions apply to this section:

- (1) Educational property. -- Any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution.
- (2) Student. -- A person enrolled in a public or private school, college or university, or a person who has been suspended or expelled within the last five years from a public or private school, college or university, whether the person is an adult or a minor.
- (3) Switchblade knife. -- A knife containing a blade ~~or blades which open~~ that opens automatically by the release of a spring or a similar contrivance.
- (4) Weapon. -- Any device enumerated in subsection (b) or (d) of this section.

(b) It shall be a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any

dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if:

- (1) The person is not a student attending school on the educational property;
- (2) The firearm is not concealed within the meaning of G.S. 14-269;
- (3) The firearm is not loaded and is in a locked container, a locked vehicle, or a locked firearm rack which is on a motor vehicle; and
- (4) The person does not brandish, exhibit, or display the firearm in any careless, angry, or threatening manner.

(g) This section shall not apply to:

- (1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;
- (2) Armed forces personnel, officers and soldiers of the militia and national guard, law enforcement personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or
- (3) Home schools as defined in G.S. 115C-563(a)."

Sec. 5. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who possesses or carries a handgun is guilty of a ~~misdemeanor punishable by imprisonment for up to six months, a fine of up to five hundred dollars (\$500.00), or both.~~ Class 2 misdemeanor."

Sec. 6. G.S. 14-277.4(c) reads as rewritten:

"(c) A violation of subsection (a) or (b) of this section is a ~~misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), imprisonment not to exceed six months, or both.~~ Class 2 misdemeanor. A second conviction for a violation of either subsection (a) or (b) of this section within three years of the first shall be punishable as a general Class

1 misdemeanor. A third or subsequent conviction for a violation of either subsection (a) or (b) of this section within three years of the second or most recent conviction shall be punishable as a Class I felony."

Sec. 7. G.S. 14-288.14(c) reads as rewritten:

"(c) Any chairman of a board of county commissioners extending prohibitions and restrictions under the authority of this section must take reasonable steps to give notice of its terms to those likely to be affected. The chairman of the board of commissioners shall proclaim the termination of any prohibitions and restrictions extended under the authority of this section upon:

- (1) His determination that they are no longer necessary; or
- (2) The determination of the board of county commissioners that they are no longer necessary; or
- (3) The termination of the prohibitions and restrictions within the municipality."

Sec. 8. (a) Section 210 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 14-303 reads as rewritten:

"§ 14-303. *Violation of two preceding sections a misdemeanor.*

A violation of any of the provisions of G.S. 14-301 or 14-302 shall be a ~~misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court or both.~~ Class 2 misdemeanor."

Sec. 9. (a) Section 211 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 14-309 reads as rewritten:

"§ 14-309. *Violation made misdemeanor.*

Any person who violates any provision of G.S. 14-304 through 14-309 is guilty of a ~~misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court or both.~~ Class 2 misdemeanor."

Sec. 10. G.S. 14-311 reads as rewritten:

"§ 14-311. *Penalty for violation.*

Any persons violating the provisions of this Article shall be guilty of a ~~misdemeanor and shall be punishable by imprisonment in the county or municipal jail for not less than 30 days nor more than 90 days, or by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment in the discretion of the court.~~ Class 2 misdemeanor."

Sec. 11. G.S. 14-315.1(a) reads as rewritten:

"(a) Any person who resides in the same premises as a minor, owns or possesses a firearm, and stores or leaves the firearm (i) in a condition that the firearm can be discharged and (ii) in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm, is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

- (1) Possesses it in violation of G.S. 14-269.2(b);
- (2) Exhibits it in a public place in a careless, angry, or threatening manner;
- (3) Causes personal injury or death with it not in self defense; or



(4) Uses it in the commission of a crime."

**Sec. 12.** G.S. 14-315.2(c) reads as rewritten:

"(c) A violation of subsection (a) or (b) of this section is a Class 1 misdemeanor."

**Sec. 13.** The catch line of G.S. 14-318.2 reads as rewritten:

"§ 14-318.2. *Child abuse a ~~general~~ Class 1 misdemeanor.*"

**Sec. 14.** (a) Section 283 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 14-401.14(b) reads as rewritten:

"(b) A person who assembles with one or more persons to teach any technique or means to be used to commit any act in violation of subsection (a) of this section is guilty of a ~~misdemeanor punishable by imprisonment of up to two years, a fine, or both.~~ Class 1 misdemeanor."

**Sec. 15.** G.S. 15A-266.11 reads as rewritten:

"§ 15A-266.11. *Unauthorized uses of DNA Databank; penalties.*

(a) Any person who, by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a Class 1 misdemeanor in accordance with G.S. 14-3.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a Class 1 misdemeanor in accordance with G.S. 14-3."

**Sec. 16.** (a) Section 1248 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 15A-543(b) reads as rewritten:

"(b) A violation of this section is a Class 1 ~~I~~ felony if:

(1) The violator was released in connection with a felony charge against him; or

(2) The violator was released under the provisions of G.S. 15A-536."

**Sec. 17.** G.S. 15A-1340.11(7)c., as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"c. In the courts of the United States, another state, the armed services of the United States, or another ~~county,~~ country, regardless of whether the offense would be a crime if it occurred in North Carolina."

**Sec. 18.** G.S. 15A-1340.13(c), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(c) Minimum and Maximum Term. -- The judgment of the court shall contain a minimum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender. The maximum term of imprisonment applicable to each minimum term of imprisonment is, unless otherwise provided, as specified in G.S. ~~1340.17,~~ 15A-1340.17. The maximum term shall be specified in the judgment of the court."

**Sec. 18.1.** G.S. 15A-1340.13(f), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(f) Suspension of Sentence. -- Unless otherwise provided, the court shall not suspend the sentence of imprisonment if the class of offense and

prior record level ~~does~~ do not permit community or intermediate punishment as a sentence disposition. The court shall suspend the sentence of imprisonment if the class of offense and prior record level ~~requires~~ require community or intermediate punishment as a sentence disposition. The court may suspend the sentence of imprisonment if the class of offense and prior record level ~~authorizes,~~ authorize, but ~~does~~ do not require, active punishment as a sentence disposition."

Sec. 19. G.S. 15A-1340.13(h)(1) reads as rewritten:

"(1) The offense is a Class A ~~offense;~~ felony;".

Sec. 20. G.S. 15A-1340.17(d), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(d) Maximum Sentences Specified for Class F through Class I Felonies. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59".	

Sec. 21. G.S. 15A-1340.17(e), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, is amended by deleting the phrase "2957362" and substituting "294-362".

Sec. 22. G.S. 15A-1343.2(d), as enacted by Section 17.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the term of probation for offenders sentenced under Article 81B shall be as follows:

- (1) For misdemeanants sentenced to community punishment, not less ~~that~~ than six nor more than 18 months;
- (2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
- (3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
- (4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

The court may with the consent of the offender extend the original term of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original probation term."

Sec. 23. G.S. 15A-1354(b) reads as rewritten:



"(b) Effect of Consecutive Terms. -- In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Department of Correction must treat the defendant as though he has been committed for a single term with the following incidents:

- (1) The maximum prison sentence consists of the total of the maximum terms of the consecutive ~~sentences;~~ sentences, less nine months for each of the second and subsequent sentences imposed for Class B through Class E felonies; and
- (2) ~~The minimum term, if any, term~~ consists of the total of the minimum terms of the consecutive sentences."

**Sec. 24.** G.S. 15A-1368(a)(5), as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

- "(5) Maximum imposed term. -- The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court ~~judgment.~~ judgment, less nine months for each of the second and subsequent sentences imposed for Class B through Class E felonies."

**Sec. 25.** G.S. 15A-1368(b), as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(b) Administration. -- The Post-Release Supervision and Parole Commission, as authorized in Chapter ~~143,~~ 143 of the General Statutes, shall administer post-release supervision as provided in this Article."

**Sec. 26.** G.S. 15A-1368.1, as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-1368.1. *Applicability of Article 84A.*

This Article applies to all felons in Class B through Class E sentenced to an active punishment ~~as defined in G.S. 15A-1340.11,~~ under Article 81B of this Chapter. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

**Sec. 27.** G.S. 15A-1368.3(e), as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(e) Timing of Revocation. -- The Commission may revoke post-release supervision for violation of a condition during the period of supervision. The Commission may also revoke post-release supervision following a period of supervision if:

- (1) Before the expiration of the period of post-release supervision, the Commission has recorded its intent to conduct a revocation hearing; and
- (2) The Commission finds that every reasonable effort has been made to notify the supervisee and conduct the hearing earlier. *Prima facie* evidence of reasonable effort to notify is the issuance of a temporary or conditional revocation order, as provided in G.S. 15A-1376, that goes unserved."

**Sec. 28.** G.S. 15A-1445(a)(3), as enacted by Section 28 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(3) When the State alleges that the sentence imposed:

- a. Results from an incorrect determination of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
- b. Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; ~~or~~
- c. Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction ~~level.~~ level; or
- d. Imposes an intermediate punishment pursuant to G.S. 15A-1340.13(g) based on findings of extraordinary mitigating circumstances that are not supported by evidence or are insufficient as a matter of law to support the dispositional deviation."

Sec. 29. G.S. 18B-102(b), as amended by Section 310 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(b) Violation a Class 1 Misdemeanor. -- Unless a different punishment is otherwise expressly stated, any person who violates any provision of this Chapter shall be guilty of a Class 1 misdemeanor. In addition the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505."

Sec. 30. (a) Section 1250 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 20-34.1(a) reads as rewritten:

"(a) An employee of the Division or of an agent of the Division who does any of the following commits a Class 1 I felony:

- (1) Charges or accepts any money or other thing of value, except the required fee, for the issuance of a drivers license or a special identification card.
- (2) Knowing it is false, accepts false proof of identification submitted for a drivers license or a special identification card.
- (3) Knowing it is false, enters false information concerning a drivers license or a special identification card in the records of the Division."

Sec. 31. G.S. 20-37.6(c3), as enacted by Section 1 of Chapter 373 of the 1993 Session Laws, reads as rewritten:

"(c3) It shall be unlawful to sell a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard issued pursuant to this section. A violation of this subsection shall be a Class 2 misdemeanor and may be punished pursuant to G.S. 20-176(c) and (c1)."

Sec. 32. G.S. 20-138.5(b), as amended by Section 1258 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a ~~Class 1~~ Class I felon. Sentences imposed under this subsection shall run

consecutively with and shall commence at the expiration of any sentence being served."

Sec. 33. G.S. 20-310(f)(5) reads as rewritten:

"(5) Either in the notice or in an accompanying statement advise the insured that operation of a motor vehicle without complying with the provisions of this Article is a Class 2 misdemeanor punishable pursuant to G.S. 20-176(c) and (c1) and specifying the penalties for such violation."

Sec. 34. G.S. 23-9, as amended by Section 397 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 23-9. *Creditors to file verified claims with clerk; false swearing misdemeanor.*

All creditors of the maker of such deed of trust shall, before receiving payment of any amount from the said trustee, file with the clerk of the superior court a statement under oath that the amount claimed by him is justly due, after allowing all credits and offsets, to the best of his knowledge and belief. Any creditor who shall knowingly swear falsely in such statement shall be guilty of a Class 1 misdemeanor ~~misdemeanor~~.

Sec. 35. G.S. 49-8 reads as rewritten:

"§ 49-8. *Power of court to modify orders, suspend sentence, etc.*

Upon the determination of the issues set out in ~~the foregoing section~~ G.S. 49-7 and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his or her willingness to cooperate, to make an order or orders upon the defendant and to modify such order or orders from time to time as the circumstances of the case may in the judgment of the court require subject to the limitations of G.S. 50-13.10. The order or orders made in this regard may include any or all of the following alternatives:

- (1) ~~Commit the defendant to prison for a term not to exceed six months;~~
- (2) Suspend sentence and continue the case from term to term;
- (3) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;
- (4) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;
- (5) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this Article."

Sec. 36. G.S. 55A-1-29(b) reads as rewritten:

"(b) An offense under this section is a Class 1 misdemeanor."

Sec. 37. G.S. 55A-1-32(b) reads as rewritten:

"(b) Each officer and director of a domestic or foreign corporation who knowingly fails or refuses, within the time prescribed by this Chapter, to answer truthfully and fully interrogatories propounded to him by the

Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor."

**Sec. 38.** G.S. 57C-1-29(b) reads as rewritten:

"(b) An offense under this section is a Class 1 misdemeanor."

**Sec. 39.** G.S. 57C-1-32(b) reads as rewritten:

"(b) Each manager of a foreign or domestic limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to the manager by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor."

**Sec. 40.** (a) Section 505 of Chapter 539 of the 1993 Session Laws is repealed.

(b) The catch line of G.S. 66-11 reads as rewritten:

"§ 66-11. *Dealing in regulated metals property; violations of section Class 1 misdemeanor*."

(c) G.S. 66-11(f) reads as rewritten:

"(f) Violations. -- Any person violating any of the provisions of this section shall be guilty of a ~~misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00), imprisoned for not longer than two years, or both.~~ Class 1 misdemeanor."

**Sec. 41.** G.S. 72-7.1(b) reads as rewritten:

"(b) Innkeepers allowing pets must post a sign measuring not less than five inches by seven inches at the place where guests register informing them pets are permitted in sleeping rooms and in adjoining rooms. If certain pets are permitted or prohibited, the sign must so state. If any pets are permitted, the innkeeper must maintain a minimum of ten percent (10%) of the sleeping rooms in the inn or hotel as rooms where pets are not permitted and the sign required by this subsection must also state that such rooms are available."

**Sec. 42.** G.S. 72-7.1(d), as amended by Section 545 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(d) Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor."

**Sec. 43.** The catch line of G.S. 75-28 reads as rewritten:

"§ 75-28. *Unauthorized disclosure of tax information; violation a Class 1 misdemeanor*."

**Sec. 44.** G.S. 75A-6.1(c) reads as rewritten:

"(c) Violation of the navigation rules specified in subsection (a) of this section shall constitute a ~~misdemeanor punishable by a fine not to exceed one hundred dollars (\$100.00).~~ Class 3 misdemeanor and is punishable only by a fine not to exceed one hundred dollars (\$100.00)."

**Sec. 45.** G.S. 76A-46, as amended by Section 578 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 76A-46. *Compulsory use of pilots.*

Every foreign vessel and every United States vessel sailing under register, including such vessels towing or being towed when underway or docking in ~~the~~ the waters of the Morehead City Harbor and Beaufort Bar, either incoming or outgoing, and over 60 gross tons, shall employ and utilize a State licensed pilot. Every foreign vessel sailing including such vessels

towing or being towed when underway or docking in the Morehead City to Aurora water route, and over 60 gross tons, shall employ and utilize a State licensed pilot. Any master of a vessel violating this section by failing to use a State licensed pilot shall be guilty of a Class 1 misdemeanor except as provided for in G.S. 76A-54."

**Sec. 46.** G.S. 90-95(h)(3), as amended by Section 30 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except ~~decocainized~~ decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as 'trafficking in cocaine' and if the quantity of such substance or mixture involved:

- a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
- b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars (\$100,000);
- c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars (\$250,000)."

**Sec. 47.** G.S. 90-95(h)(4)b., as amended by Section 30 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

- "b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of ~~120~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars (\$100,000);".

**Sec. 48.** G.S. 90-452(a) reads as rewritten:

"(a) Unlawful Acts. -- It is unlawful to engage in the practice of acupuncture without a license issued pursuant to this Article. It is unlawful to advertise or otherwise represent oneself as qualified or authorized to engage in the practice of acupuncture without having the license required by this Article. A violation of this subsection is a ~~misdemeanor punishable by imprisonment for up to two years, a fine, or both.~~ Class 1 misdemeanor."

**Sec. 49.** G.S. 93E-1-13(a) reads as rewritten:



"(a) Any person who acts as, or holds himself out to be, a State-licensed or State-certified real estate appraiser without first obtaining a license or certificate as provided in this Chapter, or who willfully performs the acts specified in G.S. 93E-1-12(a)(1) through (10), shall be guilty of a ~~misdemeanor and shall be punished by a fine or imprisonment, or by both, in the discretion of the court. Class 1 misdemeanor.~~"

**Sec. 50.** G.S. 105-163.013(d) reads as rewritten:

"(d) Application Forms; Rules; Fees. -- Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (a), (b), and (c) of this section. The Secretary may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a ~~misdemeanor and is punishable as provided in G.S. 14-3. Class 1 misdemeanor.~~

The fee for filing an application for registration under this section shall be one hundred dollars (\$100.00). The fee for filing an application for renewal of registration under this section shall be fifty dollars (\$50.00). The fee for filing an application for reinstatement of registration under this section shall be fifty dollars (\$50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided."

**Sec. 51.** (a) Section 712 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 105-259(c) reads as rewritten:

"(c) Punishment. -- A person who violates this section is guilty of a ~~misdemeanor and may be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), imprisoned for up to two years, or both. Class 1 misdemeanor.~~ If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

**Sec. 52.** G.S. 105-449.34(b) reads as rewritten:

"(b) ~~Six-Month Class 2 Misdemeanors.~~ -- A person who commits one or more of the following acts is guilty of a ~~misdemeanor and is punishable by imprisonment for up to six months, a fine of up to five hundred dollars (\$500.00), or both.~~ Class 2 misdemeanor:

- (1) Knowingly dispenses non-tax-paid fuel into the supply tank of a motor vehicle.
- (2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a motor vehicle."

Sec. 53. (a) Section 784 of Chapter 539 of the 1993 Session Laws is repealed.

(b) G.S. 106-451 reads as rewritten:

"§ 106-451. *Numbering of cotton bales by public ginneries; public gin defined.*

(a) Any person, firm or corporation operating any public cotton gin, that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways:

- (1) Attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number.
- (2) Impress the serial number upon one of the bands or ties around the bale.

Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a ~~misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not more than 30 days.~~ Class 3 misdemeanor for each and every offense.

(b) Any person, firm or corporation buying a bale of cotton on which this number has: (i) been removed; (ii) defaced by cutting; (iii) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a Class 3 misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not more than 30 days. offense.

(c) Every public ginnery, as defined in subsection (a) of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a Class 1 misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by subsection (a) of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number prescribed in subsection (a) of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof."

Sec. 54. (a) Section 785 of Chapter 539 of the 1993 Session Laws is repealed.



(b) G.S. 106-451.1 reads as rewritten:

"§ 106-451.1. *Purchasers of cotton to keep records of purchases.*

Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the seller of the cotton, the date on which purchased, the weight or amount and the serial number of the bales provided for by G.S. 106-451. Any person violating the provisions of this section shall be guilty of a ~~misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court:~~ Class 1 misdemeanor: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this State shall be required to keep only so much of the records hereinabove specified as purchasers are required to keep by the law of the state where said cotton was ginned."

Sec. 55. G.S. 106-549.68(c)(1), as amended by Section 803 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(1) Any person that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a Class 1 misdemeanor."

Sec. 56. G.S. 106-764 reads as rewritten:

"§ 106-764. *Violation.*

A person who violates this act or a rule of the Board of Agriculture adopted hereunder is guilty of a ~~misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than 30 days, or both.~~ Class 3 misdemeanor."

Sec. 57. G.S. 113-154.1(i) reads as rewritten:

"(i) Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

(1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is a ~~misdemeanor~~ punishable as follows:

- a. For a first ~~conviction~~, conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars (\$50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars (\$250.00), or imprisonment not to exceed 30 days. (\$250.00).
- b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars (\$250.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars (\$500.00), or imprisonment not to exceed 90 days, or both. (\$500.00).
- c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed

of not less than five hundred dollars (\$500.00) or double the value of the fish which are the subject of the transaction, whichever is ~~greater, or imprisonment not to exceed six months, or both, greater.~~

- (2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a)."

Sec. 58. G.S. 113-156(i) reads as rewritten:

"(i) Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

- (1) A violation of subsections (a), (g), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is ~~a misdemeanor~~ punishable as follows:

- a. For a first ~~conviction~~, conviction or for a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. a A fine shall be imposed of not less than fifty dollars (\$50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars (\$250.00), or imprisonment not to exceed 30 days. (\$250.00).
- b. For a second conviction within three years, a violation is a Class 2 misdemeanor. a A fine shall be imposed of not less than two hundred fifty dollars (\$250.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars (\$500.00), or imprisonment not to exceed 90 days, or both. (\$500.00).
- c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. a A fine shall be imposed of not less than five hundred dollars (\$500.00) or double the value of the fish which are the subject of the transaction, whichever is greater, or imprisonment not to exceed six months, or both, greater.

- (2) A violation of any other provision of this section other than subsections (a), (g), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (g), or (h) of this section, is punishable under G.S. 113-135(a)."

Sec. 59. Effective January 1, 1997, G.S. 115C-290.3 reads as rewritten:

"§ 115C-290.3. *False representation of qualifications prohibited.*

It is unlawful for a person whom the Board has not qualified for certification as a public school administrator to represent himself or herself as having been qualified by the Board or to hold himself or herself out to the public by any title or description denoting that he or she has been qualified by the Board. A person who violates this section is guilty of a ~~misdemeanor and is punishable by imprisonment for up to six months, a fine of up to two hundred dollars (\$200.00), or both. Class 2 misdemeanor.~~"

**Sec. 60.** G.S. 136-20(e), as amended by Section 979 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(e) If any railroad company so ordered by the Secretary of Transportation to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a Class 3 misdemeanor and shall only be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense."

**Sec. 61.** G.S. 143-34, as amended by Section 1003 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 143-34. *Penalties and punishment for violations.*

A refusal to perform any of the requirements of this Article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred ~~and~~ fifty dollars (\$250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a Class 1 misdemeanor. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to such offender."

**Sec. 62.** G.S. 143-153, as amended by Section 1015 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 143-153. *Keeping swine near State institutions; penalty.*

On the petition of a majority of the legal voters living within a radius of one quarter of a mile of the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one quarter of a mile. Any person violating this section shall be guilty of a Class 3 misdemeanor and shall ~~only~~ be subject to only a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00)."

**Sec. 63.** G.S. 143B-267, as amended by Section 43 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 143B-267. *Post-Release Supervision and Parole Commission -- members; selection; removal; chairman; compensation; quorum; services.*

The Post-Release Supervision and Parole Commission shall consist of five full-time members. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1993. The terms of three members appointed effective July 1, 1993, shall be for three years. The terms of two members appointed effective July 1, 1993, shall be for four years. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify.

Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting ~~commission~~ Commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work-release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work-release privileges except by majority vote of the full ~~commission~~ Commission.

The full-time members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

**Sec. 64.** G.S. 148-4.1(h), as enacted by Section 31 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(h) A person sentenced under Article 81B of Chapter 15A of the General Statutes shall not be released pursuant to this section."

**Sec. 65.** G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is



available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanor, which local facility shall accept the transferred prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is ~~180~~ 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

Sec. 66. G.S. 153A-148.1(b) reads as rewritten:

"(b) Punishment. -- A person who violates this section is guilty of a ~~misdemeanor and may be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), imprisoned for up to two years, or both.~~ Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Sec. 67. G.S. 160A-208.1(b) reads as rewritten:

"(b) Punishment. -- A person who violates this section is guilty of a ~~misdemeanor and may be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), imprisoned for up to two years, or both.~~ Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Sec. 68. G.S. 160A-308, as amended by Section 1086 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 160A-308. *Regulation of dune buggies.*

A municipality may by ordinance regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system. Violation of any ordinance adopted by the governing body of a municipality pursuant to this section is a Class 3 misdemeanor.

Provided, a municipality shall not prohibit the use of such specified vehicles from the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by municipalities under this section."

Sec. 69. G.S. 162A-6.1(g) reads as rewritten:

"(g) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a ~~misdemeanor and upon conviction shall be fined an amount not more than five hundred dollars (\$500.00).~~ Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars (\$500.00)."

Sec. 70. G.S. 162A-6.1(h) reads as rewritten:

"(h) Any person not specifically authorized by this section to have access to a personnel file designated as confidential, who shall:

- (1) Knowingly and willfully examine in its official filing place; or
- (2) Remove or copy

any portion of a confidential personnel file shall be guilty of a ~~misdemeanor and, upon conviction, shall be fined in the discretion of the court, but not in excess of five hundred dollars (\$500.00).~~ Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars (\$500.00)."

**Sec. 71.** The following statutes which contain felony offenses are repealed:

- (1) G.S. 14-9. Conspiring to rebel against the State.
- (2) G.S. 14-18.1. Conspiracy or solicitation to commit murder; conspiracy or solicitation to commit murder of a law enforcement officer, State official, juror or witness; punishments.
- (3) G.S. 14-27.6. Penalty for attempt.
- (4) G.S. 14-50. Conspiracy to injure or damage by use of explosive or incendiary; punishment.
- (5) G.S. 14-89. Attempted train robbery.
- (6) G.S. 14-95. Conspiring with officers of railroad companies to embezzle.
- (7) G.S. 14-212. Perjury in court-martial proceedings.

**Sec. 72.** The following statutes which contain misdemeanor offenses are repealed:

- (1) G.S. 14-78.1. Trading for corn without permission of owner of premises.
- (2) G.S. 14-80. Larceny of wood and other property from land.
- (3) G.S. 14-86. Destruction or taking of soft drink bottles.
- (4) G.S. 14-111. Fraudulently obtaining credit at hospitals and sanatoriums.
- (5) G.S. 14-117.1. Use of words "army" or "navy" in name of mercantile establishment.
- (6) G.S. 14-138. Setting fire to woodlands and grasslands with campfires.
- (7) G.S. 14-161. Malicious removal of packing from railway coaches and other rolling stock.
- (8) G.S. 14-164. Taking away or injuring exhibits at fairs.
- (9) G.S. 14-200. Disturbing religious assembly by certain exhibitions.
- (10) G.S. 14-201. Permitting stone-horses and stone-mules to run at large.
- (11) G.S. 14-235. Speculating in claims against towns, cities and the State.
- (12) G.S. 14-257. Permitting escape of or maltreating hired convicts.
- (13) G.S. 14-270. Sending, accepting or bearing challenges to fight duels.
- (14) G.S. 14-271. Engaging in and betting on prize fights.
- (15) G.S. 14-285. Failing to enclose marl beds.
- (16) G.S. 14-345. Sale of cotton at night under certain conditions.
- (17) G.S. 14-346.1. Sale of bay rum.

- (18) G.S. 14-346.2. Sale of certain articles on Sunday prohibited; counties excepted.
- (19) G.S. 14-357. Issuing nontransferable script to laborers.
- (20) G.S. 14-369. Wounding, capturing or killing of homing pigeons prohibited.
- (21) G.S. 14-386. Erecting signals and notices in imitation of those of railroads.

**Sec. 73.** Except as otherwise provided, this act becomes effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective, except that if Section 1359 of that act provides that some sections of that act are effective at earlier dates than others, this act becomes effective on the latest of the dates provided by Section 1359. This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 15th day of March, 1994.

H.B. 200

## CHAPTER 15

AN ACT TO PROVIDE THAT THE GOVERNOR SHALL SET THE PRISON POPULATION CAP AND TO PROVIDE THAT IN PAROLING INMATES UNDER THE PRISON POPULATION CAP THE PAROLE COMMISSION MAY RELEASE NONVIOLENT INMATES WHO WOULD NOT OTHERWISE BE ELIGIBLE FOR RELEASE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 148-4.1 reads as rewritten:

"§ 148-4.1. *Release of inmates.*

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) Except as provided in subsection (c) and (e), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(c1) For purposes of this section only, 'prison capacity' means the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina, as set by the Governor. In setting the prison capacity for purposes of this section, the Governor shall consider the number of beds available and shall make a finding that the number set would not jeopardize the State's ability to perform its obligations



under the law. In no event shall the number set by the Governor under this subsection exceed 24,500.

(d) If the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of 21,400 prison capacity for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of 21,400 prison capacity.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of 21,400 prison capacity, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of 21,400 prison capacity, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except:

- (1) Those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving, and
- (2) Those persons convicted pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145.

(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed 21,400 prison capacity.

(g) In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A."

Sec. 2. Sections 7 through 9 of Chapter 91 of the 1993 Session Laws are repealed.

Sec. 3. G.S. 148-4.1 is amended by adding a new subsection to read:  
"(g1) Notwithstanding any other provision of law, whenever the Parole Commission is required to release inmates in order to meet the requirements of this section, the Parole Commission may parole nonviolent inmates who would not otherwise be eligible for parole instead of paroling violent inmates who are eligible for parole."

Sec. 4. Effective January 1, 1995, G.S. 148-4.1(g1) reads as rewritten:

"(g1) Notwithstanding any other provision of law, law except for subsection (h) of this section, whenever the Post-Release Supervision and Parole Commission is required to release inmates in order to meet the requirements of this section, the Post-Release Supervision and Parole Commission may parole nonviolent inmates who would not otherwise be eligible for parole instead of paroling violent inmates who are eligible for parole. This subsection does not apply to sentences under Article 81B of Chapter 15A of the General Statutes."

**Sec. 5.** This act is effective upon ratification, but Sections 3 and 4 expire on July 1, 1996.

In the General Assembly read three times and ratified this the 15th day of March, 1994.

## H.B. 10

## CHAPTER 16

AN ACT TO AMEND THE LAWS REGARDING THE CONFISCATION,  
FORFEITURE, AND DISPOSITION OF FIREARMS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15-11.1 is amended by adding a new subsection to read:

"(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

- (1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.
- (2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.
- (3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of

Chapter 113 of the General Statutes or any local wildlife hunting ordinance."

Sec. 2. G.S. 14-269.1(2) and (3) are repealed.

Sec. 3. This act becomes effective May 1, 1994.

In the General Assembly read three times and ratified this the 15th day of March, 1994.

H.B. 229

## CHAPTER 17

AN ACT TO AUTHORIZE PERSONS HAVING TEMPORARY CUSTODY OF JUVENILES TO ESCORT A JUVENILE UNLAWFULLY ABSENT FROM SCHOOL TO THE JUVENILE'S SCHOOL OR A PLACE IN THE LOCAL SCHOOL ADMINISTRATIVE UNIT.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 7A-572(a) reads as rewritten:

"(a) A person who takes a juvenile into custody without a court order under G.S. 7A-571(1), (2), or (3) shall proceed as follows:

- (1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;
- (2) Release the juvenile to his parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is unnecessary, the person having temporary custody may deliver the juvenile to the juvenile's school or, if the local city or county government and the local school board adopt such a policy, to a place in the local school administrative unit.
- (3) If the juvenile is not released under subsection (b), the person having temporary custody shall proceed as follows:
  - a. In the case of a juvenile alleged to be delinquent or undisciplined, he shall request a petition be drawn pursuant to G.S. 7A-561 or if the clerk's office is closed, the magistrate pursuant to G.S. 7A-562. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the judge or person delegated authority pursuant to G.S. 7A-573 if other than the intake counselor for a determination of the need for continued custody.
  - b. In the case of a juvenile alleged to be abused, neglected, or dependent, he shall communicate with the Director of the Department of Social Services who shall consider prehearing diversion. If the decision is made to file a petition, the

director shall contact the judge or person delegated authority pursuant to G.S. 7A-573 for a determination of the need for continued custody.

- (4) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours unless:
- a. A petition or motion for review has been filed by an intake counselor or the Director of the Department of Social Services, and
  - b. An order for secure or nonsecure custody has been entered by a judge."

Sec. 2. This act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 17th day of March, 1994.

S.B. 124

## CHAPTER 18

### AN ACT TO PROVIDE FOR THE USE OF LASER SPEED ENFORCEMENT IN NORTH CAROLINA.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 8-50.2 reads as rewritten:

"§ 8-50.2. *Results of speed-measuring instruments; admissibility.*

(a) The results of the use of radio ~~microwave~~ microwave, laser, or other speed-measuring instruments shall be admissible as evidence of the speed of an object in any criminal or civil proceeding for the purpose of corroborating the opinion of a person as to the speed of an object based upon the visual observation of the object by such person.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a radio ~~microwave~~ microwave, laser, or other electronic speed-measuring instrument are not admissible in any proceeding unless it is found that:

- (1) The operator of the instrument held, at the time the results of the speed-measuring instrument were obtained, a certificate from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) authorizing him to operate the speed-measuring instrument from which the results were obtained.
- (2) The operator of the instrument operated the speed-measuring instrument in accordance with the procedures established by the Commission for the operation of such instrument.
- (3) The instrument employed was approved for use by the Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.
- (4) The speed-measuring instrument had been calibrated and tested for accuracy in accordance with the standards established by the Commission for that particular instrument.

(c) All radio ~~microwave~~ microwave and other electronic speed-measuring instruments shall be tested for accuracy by a technician possessing at least a second-class or general radiotelephone license from the Federal

Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission within a period of 12 months prior to the alleged violation. A written certificate by such technician showing that the test was made within the required period and that the instrument was accurate shall be competent and *prima facie* evidence of those facts in any proceeding referred to in subsection (a) of this section.

All laser speed enforcement instruments shall be tested in accordance with standards established by the Commission. The Commission shall provide for certification of laser speed enforcement instruments. A written certificate by a technician certified by the Commission showing that a test was made within the required testing period and that the instrument was accurate shall be competent and *prima facie* evidence of those facts in any proceeding referred to in subsection (a) of this section.

(d) In every proceeding where the results of a radio ~~microwave~~ microwave, laser, or other speed-measuring instrument is sought to be admitted, judicial notice shall be taken of the rules approving the use of the models and types of radio microwave and other speed-measuring instruments and the procedures for operation and calibration or measuring accuracy of such instruments."

**Sec. 2.** G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

- (1) Promulgate rules and regulations for the administration of this Chapter, which rules may require (i) the submission by any criminal justice agency of information with respect to the employment, education, retention, and training of its criminal justice officers, and (ii) the submission by any criminal justice training school of information with respect to its criminal justice training programs that are required by this Chapter;
- (2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position;
- (3) Certify, pursuant to the standards that it has established for the purpose, persons as qualified under the provisions of this Chapter to be employed at entry level and retained as criminal justice officers;
- (4) Establish minimum standards for the certification of criminal justice training schools and programs or courses of instruction that are required by this Chapter;
- (5) Certify, pursuant to the standards that it has established for the purpose, criminal justice training schools and programs or courses of instruction that are required by this Chapter;
- (6) Establish minimum standards and levels of education and experience for all criminal justice instructors who participate in



programs or courses of instruction that are required by this Chapter;

- (7) Certify, pursuant to the standards that it has established for the purpose, criminal justice instructors who participate in programs or courses of instruction that are required by this Chapter;
- (8) Investigate and make such evaluations as may be necessary to determine if criminal justice agencies, schools, and individuals are complying with the provision[s] of this Chapter;
- (9) Adopt and amend bylaws, consistent with law, for its internal management and control;
- (10) Enter into contracts incident to the administration of its authority pursuant to this Chapter;
- (11) Establish minimum standards and levels of training for certification and periodic recertification of operators of and instructors for training programs in radio ~~microwave~~ microwave, laser, and other electronic speed-measuring instruments;
- (12) Certify and recertify, pursuant to the standards that it has established, operators and instructors for training programs for each approved type of radio ~~microwave~~ microwave, laser, and other electronic speed-measuring instruments;
- (13) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of radio ~~microwave~~ microwave, laser, and other speed-measuring instruments and establish the procedures for operation of each approved instrument and standards for calibration and testing for accuracy of each approved instrument;
- (14) Establish minimum standards for in-service training for criminal justice officers."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of March, 1994.

S.B. 50

## CHAPTER 19

AN ACT TO PROVIDE THAT A DEFENDANT WHO WILLFULLY VIOLATES A CONDITION OF PROBATION MAY BE HELD IN CRIMINAL CONTEMPT FOR THE VIOLATION.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 5A-11(a) is amended by adding a new subdivision to read:

"(9a) Willful refusal by a defendant to comply with a condition of probation."

Sec. 2. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e1) Criminal Contempt in Response to Violation. -- If a defendant willfully violates a condition of probation, the court may hold the defendant in criminal contempt as provided in Article 1 of Chapter 5A of the General



Statutes. A finding of criminal contempt by the court shall not revoke the probation."

Sec. 3. G.S. 15A-1343.2(g) is repealed.

Sec. 4. This act becomes effective May 1, 1994, and applies to defendants sentenced on or after that date.

In the General Assembly read three times and ratified this the 18th day of March, 1994.

S.B. 123

## CHAPTER 20

AN ACT TO PROVIDE FOR THE FORFEITURE OF CERTAIN  
CITIZENSHIP PRIVILEGES OF AN INDIVIDUAL CONVICTED OF  
A FELONY WHO REFUSES PROBATION OR WHOSE PROBATION  
IS REVOKED OR SUSPENDED.

Whereas, the rights and privileges of citizenship are interrelated with the responsibilities of citizenship; and

Whereas, it is the policy of this State that conviction of a felony connotes such irresponsibility as to justify forfeiture of privileges as well as forfeiture of rights; and

Whereas, licensing by the State and its subdivisions for regular and commercial drivers licenses, business and occupational licenses, and hunting and fishing licenses, is a matter of privilege and not of right; and

Whereas, although constitutional standards apply to every citizen's opportunity for licensing, primarily through due process and equal protection considerations, the people of North Carolina demand that every citizen demonstrate sufficient responsibility to retain licensing privileges; and

Whereas, one who commits a felony does not demonstrate sufficient responsibility; and

Whereas, the State may require forfeiture of any licensing privilege upon a person's conviction of a felony; and

Whereas, to further the purposes of suspended sentences and probation and provide incentive for persons convicted of a felony to complete such sentences and accept responsibility for their conduct, the State should require forfeiture of a person's licensing privileges if the person does not consent to a suspended sentence or probation or if the person's probation is revoked or suspended; Now, therefore,

*The General Assembly of North Carolina enacts:*

Section 1. Article 81 of Chapter 15A of the General Statutes is amended by adding a new section to read:

*"§ 15A-1331A. Forfeiture of licensing privileges after conviction of a felony.*

*(a) The following definitions apply in this section:*

- (1) Licensing agency. -- Any department, division, agency, officer, board, or other unit of State or local government that issues licenses for licensing privileges.
- (2) Licensing privilege. -- The privilege of an individual to be authorized to engage in an activity as evidenced by the following licenses: regular and commercial drivers licenses, occupational

licenses, hunting licenses and permits, and fishing licenses and permits.

- (3) Occupational license. -- A licensure, permission, certification, or similar authorization required by statute or rule to practice an occupation or business. The term does not include a tax license issued under Chapter 105 of the General Statutes, Article 7 of Chapter 153A of the General Statutes, or Article 9 of Chapter 160A of the General Statutes.

(b) Upon conviction of a felony, an individual automatically forfeits the individual's licensing privileges for the full term of the maximum sentence of imprisonment imposed on the individual by the sentencing court at the time of conviction for the offense, if:

- (1) The individual is offered a suspended sentence on condition the individual accepts probation and the individual refuses probation,  
or  
 (2) The individual's probation is revoked or suspended, and the judge makes findings in the judgment that the individual failed to make reasonable efforts to comply with the conditions of probation.

(c) Whenever an individual's licensing privileges are forfeited under this section, the judge shall make findings in the judgment of the licensing privileges held by the individual known to the court at that time, the driver's license number and social security number of the individual, and the beginning and ending date of the period of time of the forfeiture. The terms and conditions of the forfeiture shall be transmitted by the clerk of court to the Division of Motor Vehicles, in accordance with G.S. 20-24 and to the licensing agencies specified by the judge in the judgment. A licensing agency, upon receiving notice from the clerk of court, shall require the individual whose licensing privileges were forfeited to surrender the forfeited license issued by the agency and shall not reissue a license to that individual during the period of forfeiture as stated in the notice. Licensing agencies are authorized to establish procedures to implement this section.

(d) Notwithstanding any other provision of this section, the court may order that an individual whose licensing privileges are forfeited under this section be granted a limited driving privilege in accordance with the provisions of G.S. 20-179.3."

Sec. 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-15.1. Revocations when licensing privileges forfeited after conviction of a crime.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies."

Sec. 3. G.S. 20-179.3(b) is rewritten to read:

"(b) Eligibility. --

- (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

- (1) a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
- (2) b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
- (3) c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving; and
- (4) d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

- (2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

- a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
- b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Sec. 4. G.S. 113-277 is amended by adding a new subsection to read:

"(a4) The Wildlife Resources Commission shall order the surrender of any license or permit issued under this Article to a person whose licensing privileges have been forfeited under G.S. 15A-1331A for the period specified by the court."

Sec. 5. G.S. 15A-1331A(b), as enacted by this act, reads as rewritten:

"(b) Upon conviction of a felony, an individual automatically forfeits the individual's licensing privileges for the full term of the ~~maximum sentence of imprisonment imposed on the individual~~ period the individual is placed on probation by the sentencing court at the time of conviction for the offense, if:

- (1) The individual is offered a suspended sentence on condition the individual accepts probation and the individual refuses probation, or
- (2) The individual's probation is revoked or suspended."

**Sec. 6.** Section 5 of this act becomes effective on the date that Chapter 538 of the 1993 Session Laws becomes effective and applies to offenses committed on or after that date. The remainder of this act becomes effective May 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 18th day of March, 1994.

S.B. 2

## CHAPTER 21

AN ACT TO PROVIDE FOR LIFE IMPRISONMENT WITHOUT PAROLE FOR FIRST DEGREE MURDER AND TO PROVIDE THAT, AFTER A DEFENDANT HAS SERVED TWENTY-FIVE YEARS OF IMPRISONMENT AND EVERY TWO YEARS THEREAFTER, THE DEFENDANT'S SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE SHALL BE REVIEWED BY A RESIDENT SUPERIOR COURT JUDGE FOR THE COUNTY IN WHICH THE DEFENDANT WAS CONVICTED AND THE JUDGE SHALL MAKE A RECOMMENDATION TO THE GOVERNOR OR AN EXECUTIVE AGENCY DESIGNATED BY THE GOVERNOR AS TO WHETHER OR NOT THE DEFENDANT'S SENTENCE SHOULD BE ALTERED OR COMMUTED.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 14-17, as amended by Section 1127 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 14-17. *Murder in the first and second degree defined; punishment.*

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt,

compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B felon."

Sec. 2. G.S. 15A-1370.1, as amended by Section 21 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-1370.1. *Applicability of Article 85.*

This Article is applicable to all prisoners serving sentences of imprisonment for convictions of impaired driving under G.S. ~~20-138.1 and prisoners serving sentences of life imprisonment, 20-138.1.~~ This Article does not apply to a prisoner serving a sentence of life imprisonment without parole. A prisoner serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 3. G.S. 15A-1371(a1), as amended by Section 22 of Chapter 538 of the 1993 Session Laws, is repealed.

Sec. 4. G.S. 15A-1372(a), as amended by Section 23 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Term of Parole. -- The term of parole for any person released from imprisonment may be no greater ~~than;~~ than one year.

(1) ~~One year for a conviction for impaired driving under G.S. 20-138.1; or~~

(2) ~~Three years for a sentence of life imprisonment.~~"

Sec. 5. G.S. 15A-2002, as amended by Section 29 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-2002. *Capital offenses; jury verdict and sentence.*

If the recommendation of the jury is that the defendant be sentenced to death, the judge shall impose a sentence of death in accordance with the provisions of Chapter 15, Article 19 of the General Statutes. If the recommendation of the jury is that the defendant be imprisoned for life in the State's prison, the judge shall impose a sentence of imprisonment for life in the State's ~~prison,~~ prison, without parole.

The judge shall instruct the jury, in words substantially equivalent to those of this section, that a sentence of life imprisonment means a sentence of life ~~with eligibility for parole consideration after 25 years, without parole.~~"

Sec. 6. G.S. 143B-266(a), as amended by Section 42 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that ~~for persons sentenced under Article 81B of Chapter 15A of the General Statutes, only those sentenced to life imprisonment are~~ Statutes are not eligible for parole. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising



his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes."

Sec. 7. Chapter 15A of the General Statutes is amended by adding a new Article to read:

**"ARTICLE 85B.**

**"Review of Sentences of Life Imprisonment Without Parole.**

**"§ 15A-1380.5. Review of sentences of life imprisonment without parole.**

(a) For purposes of this Article the term 'life imprisonment without parole' shall include a sentence imposed for 'the remainder of the prisoner's natural life'.

(b) A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment. The defendant's sentence shall be reviewed again every two years as provided by this section, unless the sentence is altered or commuted before that time.

(c) In reviewing the sentence the judge shall consider the trial record and may review the defendant's record from the Department of Correction, the position of any members of the victim's immediate family, the health condition of the defendant, the degree of risk to society posed by the defendant, and any other information that the judge, in his or her discretion, deems appropriate.

(d) After completing the review required by this section, the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge's discretion.

(e) The Governor or an executive agency designated under this section shall consider the recommendation made by the judge.

(f) The recommendation of a judge made in accordance with this section may be reviewed on appeal only for an abuse of discretion."

Sec. 8. This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses occurring on or after that date. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

In the General Assembly read three times and ratified this the 23rd day of March, 1994.



AN ACT TO ESTABLISH CRIME PREVENTION AND ENHANCED  
PUNISHMENT INITIATIVES, AND TO AMEND THE LAW TO  
ENHANCE CRIME CONTROL.

*The General Assembly of North Carolina enacts:*

**PART 1. TITLE OF ACT**

**Section 1.** This act shall be known as the Crime Control Act of 1994.

**PART 2. BRUTAL RAPE SENTENCES**

**Sec. 2.** G.S. 14-27.2(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class **B B1** felony."

**Sec. 3.** G.S. 14-27.4(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class **B B1** felony."

**Sec. 4.** G.S. 14-17, as amended by Section 1127 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 14-17. *Murder in the first and second degree defined; punishment.*

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class **B B2** felon."

**Sec. 5.** G.S. 14-20, as amended by Section 1129 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 14-20. *Killing adversary in duel; aiders and abettors declared accessories.*

If any person fight a duel in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction

thereof, shall be punished as a Class **B B2** felon. All their aiders and abettors shall be considered accessories before the fact.

Any person charged with killing an adversary in a duel may enter a plea of guilty to said charge in the same way and manner and under the conditions and restrictions set forth in G.S. 15-162.1 relating to pleas of guilty for first degree murder, first degree burglary, arson and rape."

Sec. 6. G.S. 14-5.2 reads as rewritten:

"§ 14-5.2. *Accessory before fact punishable as principal felon.*

All distinctions between accessories before the fact and principals to the commission of a felony are abolished. Every person who heretofore would have been guilty as an accessory before the fact to any felony shall be guilty and punishable as a principal to that felony. However, if a person who heretofore would have been guilty and punishable as an accessory before the fact is convicted of a capital felony, and the jury finds that his conviction was based solely on the uncorroborated testimony of one or more principals, coconspirators, or accessories to the crime, he shall be guilty of a Class **B B2** felony."

Sec. 7. G.S. 15A-1340.17, as enacted by Section 1 of Chapter 538 of the 1993 Session Laws and as amended by Sections 20 and 21 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"§ 15A-1340.17. *Punishment limits for each class of offense and prior record level.*

(a) Offense Classification; Default Classifications. -- The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. -- Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. -- The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; and 'A' indicates that an active punishment is ~~authorized~~, authorized; and 'Life Imprisonment Without Parole' indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.
- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or

mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.
- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

### PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment or Death as Established by Statute						
	<u>A</u> 240-300	<u>A</u> 288-360	<u>A</u> 336-420	<u>A</u> 384-480	<u>A</u> Life Imprisonment Without Parole	<u>A</u> 384-480	<u>DISPOSITION</u> <u>Aggravated</u>
<u>B1</u>	<u>192-240</u> <u>144-192</u>	<u>230-288</u> <u>173-230</u>	<u>269-336</u> <u>202-269</u>	<u>307-384</u> <u>230-307</u>	<u>346-433</u> <u>260-346</u>	<u>384-480</u> <u>288-384</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>A</u> 135-169	<u>A</u> 163-204	<u>A</u> 190-238	<u>A</u> 216-270	<u>A</u> 243-304	<u>A</u> 270-338	<u>DISPOSITION</u> <u>Aggravated</u>
<u>B2</u>	108-135	130-163	152-190	173-216	194-243	216-270	PRESUMPTIVE
	81-108	98-130	114-152	130-173	146-194	162-216	Mitigated
	<u>A</u> 63-79	<u>A</u> 86-108	<u>A</u> 100-125	<u>A</u> 115-144	<u>A</u> 130-162	<u>A</u> 145-181	<u>DISPOSITION</u> <u>Aggravated</u>
<u>C</u>	50-63	69-86	80-100	92-115	104-130	116-145	PRESUMPTIVE
	38-50	52-69	60-80	69-92	78-104	87-116	Mitigated
	<u>A</u> 55-69	<u>A</u> 66-82	<u>A</u> 89-111	<u>A</u> 101-126	<u>A</u> 115-144	<u>A</u> 126-158	<u>DISPOSITION</u> <u>Aggravated</u>
<u>D</u>	44-55	53-66	71-89	81-101	92-115	101-126	PRESUMPTIVE
	33-44	40-53	53-71	61-81	69-92	76-101	Mitigated
	<u>I/A</u> 25-31	<u>I/A</u> 29-36	<u>A</u> 34-42	<u>A</u> 46-58	<u>A</u> 53-66	<u>A</u> 59-74	<u>DISPOSITION</u> <u>Aggravated</u>
<u>E</u>	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	<u>I/A</u> 16-20	<u>I/A</u> 19-24	<u>I/A</u> 21-26	<u>A</u> 25-31	<u>A</u> 34-42	<u>A</u> 39-49	<u>DISPOSITION</u> <u>Aggravated</u>
<u>F</u>	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	<u>I/A</u> 13-16	<u>I/A</u> 15-19	<u>I/A</u> 16-20	<u>I/A</u> 20-25	<u>A</u> 21-26	<u>A</u> 29-36	<u>DISPOSITION</u> <u>Aggravated</u>
<u>G</u>	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

	C/I	I	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

(e) Maximum Sentences Specified for Class B B1 through Class E Felonies. Felonies for Minimum Terms up to 339 Months. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170

135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
335-411	336-413	337-414	338-415	339-416			

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months."

Sec. 8. G.S. 15A-1368.1, as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws and as amended by Section 26 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"§ 15A-1368.1. *Applicability of Article 84A.*

This Article applies to all felons in Class ~~B~~ B1 through Class E sentenced to an active punishment under Article 81B of this ~~Chapter~~. Chapter, but does not apply to felons in Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

Sec. 9. G.S. 15A-1340.13(h), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws and as amended by Section 19 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:



"(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. -- The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- (1) The offense is a Class A or Class B1 felony;
- (2) The offense is a drug trafficking offense under G.S. 90-95(h); or
- (3) The defendant has five or more points as determined by G.S. 15A-1340.14."

**Sec. 10.** G.S. 15A-1340.14(b), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(b) Points. -- Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B, B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class 1 misdemeanor conviction, 1 point, point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.
- (6) If all the elements of the present offense are included in the prior offense, 1 point.
- (7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

**Sec. 11.** G.S. 14-2.5, as enacted by Section 6 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 14-2.5. *Punishment for attempt to commit a felony or misdemeanor.*

Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit. An attempt to commit a Class A or Class B1 felony is a Class B2 felony, an attempt to commit a Class B2 felony is a Class C felony, an attempt to commit a Class I felony is a Class 1 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3 misdemeanor."

**Sec. 12.** G.S. 14-2.4(a), as amended by Section 5 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a



conspiracy to commit a Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor."

Sec. 13. G.S. 14-2.6(a), as enacted by Section 6.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Unless a different classification is expressly stated, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit, except that a solicitation to commit a Class A or Class B1 felony is a Class C felony, a solicitation to commit a Class B2 felony is a Class D felony, a solicitation to commit a Class H felony is a Class 1 misdemeanor, and a solicitation to commit a Class I felony is a Class 2 misdemeanor."

Sec. 14. This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective. This Part applies to offenses occurring on or after the effective date of this Part. Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions.

### PART 3. MODIFY HABITUAL FELON LAW

Sec. 15. G.S. 14-7.6 reads as rewritten:

"§ 14-7.6. *Sentencing of habitual felons.*

When an habitual felon as defined in this Article ~~shall commit~~ commits any felony under the laws of the State of North Carolina, ~~he the felon must,~~ upon conviction or plea of guilty under indictment as ~~herein provided~~ provided in this Article (except where the death penalty or a sentence of life imprisonment is imposed) be sentenced as a Class C felon. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Notwithstanding any other provision of law, a person sentenced under this Article shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder, under this section."

Sec. 16. Section 9 of Chapter 538 of the 1993 Session Laws is repealed.

Sec. 17. This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses committed on or after that date. Prosecutions for, or sentences based on, offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

**PART 4. INCREASE FIREARM PENALTY**

**Sec. 18.** G.S. 14-2.2 reads as rewritten:

*"§ 14-2.2. Sentencing of person convicted of repeated felony using deadly weapon."*

~~Notwithstanding any other provision of law, any person who has been previously convicted in the courts of this State within seven years of a felony in which a deadly weapon was used, provided that the previous felony did not occur within 10 days of the second or subsequent felony, in which a deadly weapon was used, shall serve a term for the second or subsequent felony of not less than seven years in prison, excluding gain time granted under G.S. 148-13. Any person sentenced under this section shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not sentence a person sentenced under this section as a committed youthful offender and may not suspend the sentence and place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.~~

~~For the purpose of this section, the record or records of the prior felony conviction shall be admissible in evidence after conviction and before sentencing, but only for the purpose of proving that the person has been convicted of a previous felony. A judgment of a conviction or plea of guilty or no contest to such felony offense certified to a superior court in this State from the custodian of records of any other court of this State under the same name as that by which the defendant is charged shall be prima facie evidence that the identity of such person is the same as the defendant so charged and shall be prima facie evidence of the facts so certified.~~

~~For the purposes of this section, a felony committed before a person attains the age of 18 years does not constitute a previous felony conviction.~~

~~Pleas of guilty or no contest to or convictions of felony offenses prior to September 1, 1977, are not felony offenses within the meaning of this section. Any felony offense to which a pardon has been extended does not for the purpose of this section constitute a felony. The burden of proving a pardon rests with the defendant and the State is not required to disprove a pardon.~~

Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to imprisonment for five years.

The court shall not sentence a person sentenced under this section as a committed youthful offender. The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences

imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

- (1) The person is not sentenced to an active term of imprisonment.
- (2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.
- (3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Subsection (a) of this section does not apply to the following felonies:

- (1) G.S. 14-49(b). Malicious use of explosive or incendiary.
- (2) G.S. 14-59. Burning of certain public buildings.
- (3) G.S. 14-60. Burning of schoolhouses or buildings of educational institutions.
- (4) G.S. 14-61. Burning of certain bridges and buildings.
- (5) G.S. 14-62. Burning of churches and certain other buildings.
- (6) G.S. 14-62.1. Burning of building or structure in process of construction.
- (7) G.S. 53-129. Misapplication of bank funds by officer or employee."

**Sec. 19.** (a) G.S. 14-2.2(a), as amended by Section 18 of this act, reads as rewritten:

"(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to ~~imprisonment for five years~~, a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A. Evidence of the use, display, or threatened use or display of a firearm that is needed to prove an element of the underlying felony shall not be used to establish the enhancement under this section.

~~The court shall not sentence a person sentenced under this section as a committed youthful offender.~~ The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person."

(b) G.S. 14-2.2(d), as amended by Section 18 of this act, is repealed.

(c) Section 4 of Chapter 538 of the 1993 Session Laws is repealed.

**Sec. 20.** Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

- (1) The person is not sentenced to an active term of imprisonment.
- (2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.
- (3) The person did not actually possess a firearm about his or her person."

Sec. 21. G.S. 15A-1340.4(a)(1) reads as rewritten:

"(1) Aggravating factors:

- a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- c. The defendant was hired or paid to commit the offense.
- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.



- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.
- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.
- p. The offense involved the sale or delivery of a controlled substance to a minor.
- q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.
- r. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial."

Sec. 22. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. -- The following are aggravating factors:

- (1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- (2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- (3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (4) The defendant was hired or paid to commit the offense.
- (5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

- (6) The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- (7) The offense was especially heinous, atrocious, or cruel.
- (8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- (9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- (10) The defendant was armed with or used a deadly weapon at the time of the crime.
- (11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
- (12) The defendant committed the offense while on pretrial release on another charge.
- (13) The defendant involved a person under the age of 16 in the commission of the crime.
- (14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- (15) The defendant took advantage of a position of trust or confidence to commit the offense.
- (16) The offense involved the sale or delivery of a controlled substance to a minor.
- (17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- (18) The defendant does not support the defendant's family.
- (19) The serious injury inflicted upon the victim is permanent and debilitating.
- (20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

Sec. 23. G.S. 14-269.1 reads as rewritten:

"§ 14-269.1. *Confiscation and disposition of deadly weapons.*

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, G.S. 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which



the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

- (1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.
- (2) By ordering the weapon turned over to a law-enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The clerk of the superior court of such county shall maintain a record of such weapons and the law-enforcement agency receiving them.
- (3) By ordering the weapon turned over to the sheriff of the county in which the trial is held to be sold as herein provided. Under the direction of the sheriff, the weapon shall be sold at public auction after one advertisement in a newspaper having general circulation in the county which advertisement shall be at least seven days prior to sale. The proceeds of such sale shall go to the general fund of the county in which such weapons are sold. The sheriff shall maintain a record and inventory of all such weapons received and sold by him. Sales of such weapons by the sheriff shall be held at least once each year.
- (4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.
- (5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.
- (6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

**Sec. 24.** Sections 18, 21, and 23 of this act become effective May 1, 1994, and apply to offenses committed on or after that date. The remainder of this Part becomes effective on the date that Section 56 of Chapter 538 of the 1993 Session Laws provides that that act becomes effective, and applies to offenses committed on or after that date. Prosecutions for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

**PART 5. TRANSFER JUVENILES 13 YEARS OF AGE**

**Sec. 25.** G.S. 7A-608 reads as rewritten:

"§ 7A-608. *Transfer of jurisdiction of juvenile to superior court.*

The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile ~~14 years of age or older~~ to superior court if the juvenile was 14 13 years of age or older at the time ~~he~~ the juvenile allegedly committed an offense ~~which that~~ would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the judge court finds probable cause, the judge court shall transfer the case to the superior court for trial as in the case of adults."

**Sec. 26.** G.S. 7A-609(a) reads as rewritten:

"(a) The judge court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 14 13 years of age or older when the offense was allegedly ~~committed~~ committed. ~~unless counsel~~ Counsel for the juvenile ~~waives~~ may waive in writing ~~his~~ the right to the hearing and ~~stipulates~~ stipulate to a finding of probable cause. The judge court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

**Sec. 27.** G.S. 7A-610(a) reads as rewritten:

"(a) If probable cause is ~~found~~, found and transfer to superior court is not required by G.S. 7A-608, the prosecutor or the juvenile may move that the case be transferred to the superior court for trial as in the case of adults. ~~If the alleged felony does not constitute a capital offense, the~~ The judge may proceed to determine whether the needs of the juvenile or the best interest of the State will be served by transfer of the case to superior court for trial as in the case of adults. When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony."

**Sec. 28.** G.S. 7A-601 reads as rewritten:

"§ 7A-601. *Destruction of records resulting from nontestimonial identification procedures.*

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of ~~such~~ the evidence shall be destroyed.
- (2) If in the district court or superior court pursuant to a transfer a juvenile is found not guilty, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under 14 13 years of age and who is adjudicated to have committed a delinquent act, which would be less than a felony had the juvenile been an adult, all records shall be destroyed.
- (3) If a juvenile 14 13 years of age or older is found to have committed a delinquent act ~~which that~~ would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall

be taken to ensure that these records will be maintained in such a manner and under such safeguards as to limit their use to inspection for comparison purposes by law-enforcement officers only in the investigation of a crime.

- (4) If the juvenile is transferred to superior court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law-enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law-enforcement agency having possession of such records. Following destruction, the law-enforcement agency shall make written certification to the court of such the destruction."

**Sec. 29.** The Juvenile Code Committee of the Legislative Research Commission is authorized to study the issue of whether district courts should be mandated to transfer jurisdiction of juveniles who have committed certain serious or violent felony offenses to superior court for trial as in the case of adults upon a finding of probable cause. The Committee may also study the issue of the proper age of juveniles mandatorily transferred to superior court for trial as in the case of adults. The Committee may submit an interim report of its findings and recommendations to the 1994 Regular Session of the 1993 General Assembly and shall submit a final report to the 1995 General Assembly.

**Sec. 30.** Sections 25 through 28 of this act become effective May 1, 1994, and apply to offenses committed on or after that date. The remainder of this Part is effective upon ratification.

## PART 6. THREE STRIKES YOU'RE IN

**Sec. 31.** Chapter 14 of the General Statutes is amended by adding a new Article to read:

### "ARTICLE 2B.

#### "Violent Habitual Felons.

##### "§ 14-7.7. Persons defined as violent habitual felons.

(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, 'convicted' means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony. The burden of proving a pardon shall rest with the defendant, and this State shall not be required to disprove a pardon. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.

(b) For purposes of this Article, 'violent felony' includes the following offenses:

- (1) a. Murder in the first and second degrees, G.S. 14-17.
- b. Voluntary manslaughter, G.S. 14-18.
- c. Killing an adversary in a duel, G.S. 14-30.
- d. First degree rape, G.S. 14-27.2.
- e. Second degree rape, G.S. 14-27.3.
- f. First degree sexual offense, G.S. 14-27.4.
- g. Second degree sexual offense, G.S. 14-27.5.
- h. Intercourse and sexual offense by a parent or custodian, G.S. 14-27.7.
- i. Malicious castration, G.S. 14-28.
- j. Castration or maiming without malice aforethought, G.S. 14-29.
- k. Malicious maiming, G.S. 14-30.
- l. Malicious throwing of acid or alkali, G.S. 14-30.1.
- m. Malicious assaulting in a secret manner, G.S. 14-31.
- n. Any felony assault set forth in G.S. 14-32.
- o. Felony assault on a handicapped person, G.S. 14-32.
- p. Patient abuse and neglect, negligent or intentional, G.S. 14-32.2.
- q. Discharging firearm in occupied property, G.S. 14-34.1.
- r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.
- s. Kidnapping in the first or second degree, G.S. 14-39.
- t. Malicious use of explosive or incendiary devices, G.S. 14-49.
- u. Malicious damage of occupied property by the use of explosive, G.S. 14-49.1.
- v. Burglary in the first or second degree, G.S. 14-51.
- w. Breaking out of a dwelling house, G.S. 14-53.
- x. Burglary with explosives, G.S. 14-57.
- y. Arson in the first or second degree, G.S. 14-58.
- z. Burning of a mobile home, manufactured housing, or recreational trailer, G.S. 14-58.2.
- aa. Burning of public building, G.S. 14-59.
- bb. Burning of a schoolhouse or building of an educational institution, G.S. 14-60.
- cc. Burning of bridges and buildings, G.S. 14-61.
- dd. Burning of churches and other buildings, G.S. 14-62.
- ee. Burning of building or structure in the process of construction, G.S. 14-62.1.
- gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.
- hh. Train robbery, G.S. 14-88.
- ii. Contaminating a public water supply, G.S. 14-159.1.
- jj. Felonious child abuse, G.S. 14-318.4.
- kk. First degree sexual exploitation of a minor, G.S. 14-190.16.
- ll. Distribution of adulterated food, G.S. 14-401.11.
- mm. Manufacture, sale, or delivery or possess with intent to manufacture, sell, or deliver a controlled substance within 300 feet of a school, G.S. 90-95(e)(8).

- nn. Selling and delivery of controlled substance by a person 18 or over to a person under 16, G.S. 90-95.
- oo. Discharge of oil or hazardous substance placing another in danger of death or serious bodily injury, G.S. 143-225.88(b).
- (2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).
- (3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).

"§ 14-7.8. Punishment.

When a person is charged by indictment with the commission of a violent felony and is also charged with being a violent habitual felon as defined in G.S. 14-7.7, the person must, upon conviction, be sentenced in accordance with this Article, except in those cases where the death penalty is imposed.

"§ 14-7.9. Charge of violent habitual felon.

An indictment that charges a person who is a violent habitual felon within the meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to sustain a conviction of violent habitual felon, also charge that the person is a violent habitual felon. The indictment charging the defendant as a violent habitual felon shall be separate from the indictment charging the defendant with the principal violent felony. An indictment that charges a person with being a violent habitual felon must set forth the date that prior violent felonies were committed, the name of the state or other sovereign against whom the violent felonies were committed, the dates of convictions of the violent felonies, and the identity of the court in which the convictions took place. A defendant charged with being a violent habitual felon in a bill of indictment shall not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives this 20-day period.

"§ 14-7.10. Evidence of prior convictions of violent felonies.

In all cases where a person is charged under this Article with being a violent habitual felon, the records of prior convictions of violent felonies shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of former violent felonies. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be *prima facie* evidence that the defendant named therein is the same as the defendant before the court, and shall be *prima facie* evidence of the facts set out therein.

"§ 14-7.11. Verdict and judgment.

When an indictment charges a violent habitual felon with a violent felony as provided in this Article and an indictment also charges that the person is a violent habitual felon as provided in this Article, the defendant shall be tried for the principal violent felony as provided by law. The indictment that the person is a violent habitual felon shall not be revealed to the jury unless the jury finds that the defendant is guilty of the principal violent felony or another violent felony with which the defendant is charged. If the jury finds the defendant guilty of a violent felony, the bill of indictment charging the defendant as a violent habitual felon may be presented to the same jury.



Except that the same jury may be used, the proceedings shall be as if the issue of violent habitual felon were a principal charge. If the jury finds that the defendant is a violent habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a violent habitual felon, the trial judge shall pronounce judgment on the principal violent felony or felonies as provided by law.

"§ 14-7.12. Sentencing of violent habitual felons.

A person who is convicted of a violent felony and of being a violent habitual felon must, upon conviction (except where the death penalty is imposed), be sentenced to life imprisonment without parole. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person."

Sec. 32. Effective on the date Chapter 538 of the 1993 Session Laws becomes effective, G.S. 14-7.7(b), as enacted by Section 31 of this act, reads as rewritten:

~~"(b) For purposes of this Article, 'violent felony' includes the following offenses:~~

- (1) ~~a. Murder in the first and second degrees, G.S. 14-17.~~
- ~~b. Voluntary manslaughter, G.S. 14-18.~~
- ~~c. Killing an adversary in a duel, G.S. 14-30.~~
- ~~d. First degree rape, G.S. 14-27.2.~~
- ~~e. Second degree rape, G.S. 14-27.3.~~
- ~~f. First degree sexual offense, G.S. 14-27.4.~~
- ~~g. Second degree sexual offense, G.S. 14-27.5.~~
- ~~h. Intercourse and sexual offense by a parent or custodian, G.S. 14-27.7.~~
- ~~i. Malicious castration, G.S. 14-28.~~
- ~~j. Castration or maiming without malice aforethought, G.S. 14-29.~~
- ~~k. Malicious maiming, G.S. 14-30.~~
- ~~l. Malicious throwing of acid or alkali, G.S. 14-30.1.~~
- ~~m. Malicious assaulting in a secret manner, G.S. 14-31.~~
- ~~n. Any felony assault set forth in G.S. 14-32.~~
- ~~o. Felony assault on a handicapped person, G.S. 14-32.~~
- ~~p. Patient abuse and neglect, negligent or intentional, G.S. 14-32.2.~~
- ~~q. Discharging firearm in occupied property, G.S. 14-34.1.~~
- ~~r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.~~
- ~~s. Kidnapping in the first or second degree, G.S. 14-39.~~
- ~~t. Malicious use of explosive or incendiary devices, G.S. 14-49.~~
- ~~u. Malicious damage of occupied property by the use of explosive, G.S. 14-49.1.~~
- ~~v. Burglary in the first or second degree, G.S. 14-51.~~
- ~~w. Breaking out of a dwelling house, G.S. 14-53.~~
- ~~x. Burglary with explosives, G.S. 14-57.~~

- ~~y. Arson in the first or second degree, G.S. 14-58.~~
- ~~z. Burning of a mobile home, manufactured housing, or recreational trailer, G.S. 14-58.2.~~
- ~~aa. Burning of public building, G.S. 14-59.~~
- ~~bb. Burning of a schoolhouse or building of an educational institution, G.S. 14-60.~~
- ~~cc. Burning of bridges and buildings, G.S. 14-61.~~
- ~~dd. Burning of churches and other buildings, G.S. 14-62.~~
- ~~ee. Burning of building or structure in the process of construction, G.S. 14-62.1.~~
- ~~gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.~~
- ~~hh. Train robbery, G.S. 14-88.~~
- ~~ii. Contaminating a public water supply, G.S. 14-159.1.~~
- ~~jj. Felonious child abuse, G.S. 14-318.4.~~
- ~~kk. First degree sexual exploitation of a minor, G.S. 14-190.16.~~
- ~~ll. Distribution of adulterated food G.S. 14-401.11.~~
- ~~mm. Manufacture, sale, or delivery or possess with intent to manufacture, sale, or deliver a controlled substance within 300 feet of a school, G.S. 90-90.~~
- ~~nn. Selling and delivery of controlled substance by a person 18 or over to a person under 16, G.S. 90-95.~~
- ~~oo. Discharge of oil or hazardous substance placing another in danger of death or serious bodily injury, G.S. 143-225.88(b).~~
- ~~(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).~~
- ~~(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).~~
- (b) For purposes of this Article, 'violent felony' includes the following offenses:
  - (1) All Class A through E felonies.
  - (2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).
  - (3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2)."

Sec. 33. G.S. 15A-1370.1 reads as rewritten:

"§ 15A-1370.1. Applicability of Article 85.

This Article is applicable applies to all sentenced prisoners, including Class A and Class B felons, and Class C felons who receive a sentence of life imprisonment, who are not subject to Article 85A of this Chapter. Chapter, but shall not apply to prisoners who receive life imprisonment without parole. A person serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 34. G.S. 15A-1370.1, as amended by Section 21 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-1370.1. Applicability of Article 85.

This Article is applicable to all prisoners serving sentences of imprisonment for convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of life imprisonment. This Article does not apply to a person serving a sentence of life imprisonment without parole. A

person serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 35. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

*"§ 15A-1340.10. Applicability of structured sentencing.*

*This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 that occur on or after January 1, 1995. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."*

Sec. 36. Effective May 1, 1994, Section 8 of Chapter 21 of the Session Laws of the Extra Session of 1994 reads as rewritten:

*"Sec. 8. This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses occurring on or after that ~~date~~ date except that Section 7 of this act becomes effective May 1, 1994, with respect to offenses committed on or after May 1, 1994, that are punishable under Article 2B of Chapter 14 of the General Statutes. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."*

Sec. 37. Sections 31, 36, and 37 of this act become effective May 1, 1994. Section 33 of this act becomes effective May 1, 1994, and expires on the date that Chapter 538 of the 1993 Session Laws becomes effective, but prosecution for, or sentences based on, offenses occurring before that date are not abated or affected by the expiration of that section. Sections 32, 34, and 35 of this act become effective on the date that Chapter 538 of the 1993 Session Laws becomes effective. Prosecution for, or sentences based on, offenses occurring before the effective date of this Part are not abated or affected by the repeal or amendment in this Part of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

## PART 7. EFFECTIVE DATE

Sec. 38. Except as otherwise provided, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

H.B. 128

## CHAPTER 23

AN ACT TO MAKE IT A MISDEMEANOR FOR A PERSON TO WILLFULLY MAKE A FALSE, MISLEADING, OR UNFOUNDED REPORT TO A LAW ENFORCEMENT AGENCY OR OFFICER.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 14-225 reads as rewritten:

~~"§ 14-225. *False, etc., False reports to police radio broadcasting stations, law enforcement agencies or officers.*~~

Any person who shall willfully make or cause to be made to a ~~police radio broadcasting station~~ law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation ~~thereof~~, of a law enforcement agency, or to hinder or obstruct any ~~peace law enforcement officer~~ in the performance of his duty, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both."

Sec. 2. G.S. 14-225, as enacted by Section 1 of this act, reads as rewritten:

~~"§ 14-225. *False reports to law enforcement agencies or officers.*~~

Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a ~~misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both.~~ Class 2 misdemeanor."

Sec. 3. Section 137 of Chapter 539 of the 1993 Session Laws is repealed.

Sec. 4. Section 1 of this act becomes effective July 1, 1994, and applies to offenses occurring on or after that date. Sections 2 and 3 of this act become effective on the same day that Chapter 538 of the 1993 Session Laws becomes effective and apply to offenses occurring on or after that date. Section 4 of this act is effective upon ratification. Prosecutions for offenses committed before the effective dates of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

S.B. 150

## CHAPTER 24

AN ACT TO ADJUST THE APPROPRIATIONS MADE FOR THE 1993-94 FISCAL YEAR AND THE 1994-95 FISCAL YEAR TO AID IN THE CONTROL AND PREVENTION OF CRIME.

*The General Assembly of North Carolina enacts:*

### PART 1. INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

Sec. 2. The appropriations made by the 1994 Extra Session of the General Assembly in this act for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities,

for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont

## **PART 2. TITLE OF ACT**

**Sec. 3.** This act shall be known as the Crime Control and Prevention Act of 1994.

## **PART 3. GENERAL FUND APPROPRIATIONS**

### **CURRENT OPERATIONS/GENERAL FUND**

**Sec. 4.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, for one-time expenditures, and for other purposes as enumerated are made for the biennium ending June 30, 1995, according to the schedule that follows:

<u>Current Operations - General Fund</u>	<u>1993-94</u>	<u>1994-95</u>
<u>General Assembly</u>		
01. Create the Joint Legislative Corrections Oversight Committee	\$ -	\$ 25,000 NR
02. Create the Legislative Study Commission on Farm Camp Programs	25,000 NR	-
03. Create a Legislative Study on Welfare Reform	20,000 NR	40,000 NR
Total General Assembly	<u>45,000</u>	<u>65,000</u>

### Judicial Department

01. Structured Sentencing Act effective October 1, 1994--		
a. Community Penalties (5 positions and grants) (Hire 8/1/94)		1,788,253 44,622 NR
b. Legal and administrative costs (40 positions) (Hire 8/1/94)	-	1,559,958 768,425 NR
02. Provide access to the Police Information Network (PIN) to district attorneys throughout the State	30,000 NR	-
03. Reserve for court/drug treatment program	-	800,000
04. Reserve for "Teen Court" programs	-	75,000
Total Judicial Department	<u>30,000</u>	<u>5,036,258</u>



Office of the GovernorOffice of State Budget and Management

01. Reserve for study and development  
of a statewide Criminal Justice  
Information Network (CJIN)

	100,000 NR	930,000 NR
Total Office of the Governor	100,000	930,000

Public EducationState Aid to Local SchoolAdministrative Units

01. Low Wealth School Systems'  
Supplemental Funding, in  
accordance with Section 138  
of Chapter 321 of the 1993  
Session Laws

- 10,000,000

02. Local Programs to Assist  
Children at Risk of School  
Failure

- 18,237,120

03. Intervention/Prevention  
Grant Program

- 12,000,000

Total Public Education

- 40,237,120

Department of Justice

01. Establish five new positions  
to be assigned to the Department  
of Correction--Attorney I,  
Attorney II, (2) Paralegal II, and  
Administrative Assistant III

- 202,628  
- 22,580 NR

02. Upgrade Automated Fingerprint  
Identification System  
(AFIS)

- 397,692  
- 3,074,000 NR  
- 3,696,900

Total Department of Justice

Department of Human ResourcesDHR - Secretary

01. Family Resource Center  
Grant Program - \$180,000  
administrative costs

- 2,055,000

02. Grants to "Support Our  
Students" (S.O.S.) Pilot  
Projects

- 5,000,000

03. Conduct a comprehensive study of  
the Division of Youth Services'  
Juvenile Justice System

150,000 NR

04. Expand Family Preservation  
Services Program  
Subtotal DHR - Secretary

- 500,000  
150,000 7,555,000

## Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

01. Expand the Student Services Program of the N.C. High School Athletic Association - Coach Mentor Training	-	534,000
02. Structured Sentencing Act effective October 1, 1994-- To provide substance abuse treatment services to offenders under the Treatment Alternatives to Street Crime (TASC) Program	-	1,359,380
Subtotal - Mental Health	-	1,893,380

## Division of Youth Services

01. Operating funds for two additional Wilderness Camps	-	2,566,000
02. Expand the Governor's One-on-One Program and increase the funding for each program	-	1,150,000
03. Staff to operate 147 additional beds in existing training schools including a special education teacher and guidance counselor at each school	-	7,279,419
04. Establish Alternatives to Detention Program in selected district court judicial districts	125,000	500,000
05. Outcome-Based Enhancement of the Community-Based Alternatives Program	-	5,000,000
Subtotal - Youth Services	125,000	16,495,419
Total Department of Human Resources	275,000	25,943,799

Department of Correction

01. Structured Sentencing Act effective October 1, 1994--		
a. Adult Probation and Parole (514 positions) (Hire 8/1/94 and 3/1/95)	-	14,014,808
	-	3,088,210 NR
b. Administrative Costs for Adult Probation and Parole - (10 positions) (Hire 8/1/94 and 12/1/94)	-	253,770
	-	76,818 NR
c. Administrative Costs for Central Administration Office - (22 positions) (Hire 8/1/94 and 12/1/94)	-	1,121,363
	-	184,519 NR
d. Computer Software	-	2,200,000 NR

02. Operating costs for 208 additional beds at Piedmont, Lumberton, Pender, Wayne, and Brown Creek for a total of 1040 additional beds	-	13,466,330
	-	2,033,670 NR
03. To lease jail space from local governments	-	8,358,000
04. To provide for out-of-state housing of inmates	-	24,972,000
05. Reserve to allow for contracting of 500 beds in private alcohol and drug treatment centers	-	5,156,740
	-	16,260 NR
06. Use existing space more efficiently in order to house 500 additional inmates	-	1,639,500
07. Operating costs for a new Drug and Alcohol Recovery Treatment (DART) Center	-	1,007,436
	-	192,564 NR
08. Establish a Substance Abuse Program in each of five prisons located near urban areas throughout the State	-	1,225,345
		320,000 NR
09. Reserve for the operation of a new 90-bed boot camp facility for youthful offenders	-	1,124,373
		392,293 NR
10. Provide a post-boot camp program for up to 180 probationers	-	452,619
11. Additional operating funds to bring on line the new facilities constructed with \$87.5 million prison bonds	-	18,991,090
	-	8,235,572 NR
12. Operating costs for new facilities coming on line-- Eastern Processing Center, Marion Close Custody Addition, and consolidation of five units	-	546,720
	-	125,932 NR
13. Reserve for establishment of pilot programs for treatment of parolees and probationers with substance abuse problems	-	583,000

14. Greater After Prison Support Program - a community-based pre-release and aftercare program for prison inmates	-	85,000
15. Criminal Justice Partnership Act effective April 1, 1995--		
a. Grants	-	3,000,000
b. Administration	-	146,300
	-	103,700 NR
Total Department of Correction	-	113,113,932

Department of Crime Control and Public Safety

01. Structured Sentencing Act effective October 1, 1994--		
Community Services (6 positions)	-	168,000
		12,000 NR
02. Victims Assistance Network	-	150,000
03. Additional Funds to the Crime Victims Compensation Fund	-	800,000
		3,000,000 NR
Total Department of Crime Control and Public Safety	-	4,130,000

## GRAND TOTAL CURRENT OPERATIONS -

GENERAL FUND - RECURRING	125,000	168,266,844
NONRECURRING	325,000	24,886,165
TOTAL	\$ 450,000	\$193,153,009

**PART 4. CAPITAL IMPROVEMENTS/GENERAL FUND**

Sec. 5. Appropriations are made from the General Fund for the 1993-94 and 1994-95 fiscal years for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

<u>Capital Improvements - General Fund</u>	<u>1993-94</u>	<u>1994-95</u>
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Department of Administration

01. Construct 208 additional beds at Piedmont, Lumberton, Pender, Wayne, and Brown Creek for a total of 1040 additional prison beds	\$ 21,483,914	\$ -
02. Construct Eastern Processing Center. Due to subsurface soil conditions and wetlands that were unknown at time of original project cost estimate, may need up to \$3.0 million more to complete site development for this unit	-	21,006,000

03. Construct an addition at Marion Close Custody Unit	-	5,358,900
04. Consolidation of five prison units (GPAC Recommendations)	-	10,260,500
05. Construction costs of a new Drug and Alcohol Recovery Treatment (DART) Center	1,425,000	-
06. To construct new 90-bed boot camp facility for youthful offenders	1,100,000	-
Total Department of Administration	24,008,914	36,625,400

Department of Human Resources

01. To support construction of two additional Wilderness Camps	750,000	-
02. Reserve for construction of one 24-bed Detention Center	1,600,000	-
Total Department of Human Resources	2,350,000	-

## GRAND TOTAL CAPITAL IMPROVEMENTS -

GENERAL FUND	\$ 26,358,914	\$36,625,400
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**PART 5. PROCEDURES FOR DISBURSEMENTS**

**Sec. 6.** The appropriations made by the 1994 Extra Session of the General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency, until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 1994 Extra Session of the General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act.



**PART 6. GENERAL PROVISIONS**

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**SPECIAL FUNDS, FEDERAL FUNDS, AND DEPARTMENTAL RECEIPTS/AUTHORIZATION FOR EXPENDITURES**

**Sec. 7.** There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to carry on authorized activities included under each department's operations. All these cash balances, federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute, and shall be expended at the level of service authorized by the General Assembly. If the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, then the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from the Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Funds that become available from overrealized receipts in General Fund Codes and Highway Fund Codes, other than gifts and grants that are unanticipated and are for a specific purpose only, shall not be used for new permanent employee positions or to raise the salary of existing employees except:

- (1) As provided in G.S. 116-30.1, 116-30.2, 116-30.3, 116-30.4, or 143-27; or
- (2) If the Director of the Budget finds that the new permanent employee positions are necessary to maintain the function that generated the receipts at the level anticipated in the certified budget codes for that Fund. The Director of the Budget shall notify the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the chairmen of the appropriations committees of the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office that he intends to make such a finding at least 10 days before he makes the finding. The notification shall set out the reason the positions are necessary to maintain the function.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter the General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund.

The Director of the Budget shall develop necessary budget controls, regulations, and systems to ensure that these funds and other State funds subject to the Executive Budget Act, are not spent in a manner which would cause a deficit in expenditures.

Pursuant to G.S. 143-34.2, State departments, agencies, institutions, boards, or commissions may make application for, receive, or disburse any form of non-State aid. All non-State monies received shall be deposited with the State Treasurer unless otherwise provided by State law. These funds shall be expended in accordance with the terms and conditions of the fund award that are not contrary to the laws of North Carolina.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**BUDGETING OF PILOT PROGRAMS**

**Sec. 8.** (a) Any program designated by the General Assembly as experimental, model, or pilot shall be shown as a separate budget item and shall be considered as an expansion item until a succeeding General Assembly reapproves it.

Any new program funded in whole or in part through a special appropriations bill shall be designated as an experimental, model, or pilot program.

(b) The Governor shall submit to the General Assembly with his proposed budget a report of which items in the proposed budget are subject to the provisions of this section.

Requested by: Representatives Nesbitt, Diamont, Senators Daniel, Plyler  
**LIMITATIONS ON DEPARTMENTAL USE OF APPROPRIATIONS**

**Sec. 9.** (a) Effective on ratification of this act, G.S. 143-23(a1) reads as rewritten:

"(a1) No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:

- (1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;
- (2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;
- (3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;
- (4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
- (5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure.

(a2) Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for (i) salaries for:

- (1) Salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, ~~contracted personal services, moving expenses, expenses of employees,~~ payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments; or (ii) uses
- (2) Contracted personal services if (i) the contract is for temporary services or special project services, (ii) the term of the contract does not extend beyond the fiscal year, and (iii) the contract does not impose obligations on the State after the end of the fiscal year; and
- (3) Uses for which ~~over expenditures~~ overexpenditures are permitted by subdivisions (3), (4), and (5) of this subsection (a1) of this section but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

Lapsed salary funds that become available from vacant positions are also subject to the limitation that they may not be used for new permanent employee positions or to raise the salary of existing employees.

(a3) The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund."

(b) Effective July 1, 1994, G.S. 143-23(a1), as rewritten by subsection (a) of this section, reads as rewritten:

"(a1) No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:

- (1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;
- (2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;
- (3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;
- (4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
- (5) Required to call out the National Guard.

If the total of all overexpenditures of a line item approved by the Director of the Budget for a fiscal year for the purposes set out in subdivisions (1) and (2) of this subsection exceeds ten percent (10%) of the line item amount in

the budget enacted by the General Assembly, the Director of the Budget shall report monthly to the Joint Legislative Commission on Governmental Operations. The report shall include the reasons that make overexpenditures necessary and any unforeseen events necessitating overexpenditures that occurred after the budget was enacted by the General Assembly.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure."

(c) Effective July 1, 1994, G.S. 143-23(a2), as enacted by subsection (a) of this section, reads as rewritten:

"(a2) Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for:

- (1) Salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, moving expenses of employees, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments;
- (2) Contracted personal services if (i) the contract is for temporary services or special project services, (ii) the term of the contract does not extend beyond the fiscal year, and (iii) the contract does not impose obligations on the State after the end of the fiscal year; and (iv) the total of all overexpenditures for contracted personal services approved in a program for a fiscal year does not exceed the greater of five hundred thousand dollars (\$500,000) or ten percent (10%) of the lapsed salary funds in the program for the fiscal year; and
- (3) Uses for which overexpenditures are permitted by subdivisions (3), (4), and (5) of subsection (a1) of this section but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

Lapsed salary funds that become available from vacant positions are also subject to the limitation that they may not be used for new permanent employee positions or to raise the salary of existing employees."

(d) Effective from the ratification of this act through June 30, 1994, subsection (a) of this section does not apply to contracts entered into by the Department of Correction for the confinement of prisoners in non-State facilities.

(e) The Director of the Budget shall either realign the line items in the proposed supplemental budget for the 1994-95 fiscal year so as to minimize overexpenditures of funds pursuant to G.S. 143-23 or include with the proposed supplemental budget for the 1994-95 fiscal year a statement

identifying the line items that have been consistently overexpended pursuant to G.S. 143-23 over the prior two fiscal bienniums.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**EXPENDITURES OF FUNDS IN RESERVES LIMITED**

**Sec. 10.** All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**STATE MONEY RECIPIENTS/CONFLICT OF INTEREST POLICY**

**Sec. 11.** Each private, nonprofit entity eligible to receive State funds, either by General Assembly appropriation, or by grant, loan, or other allocation from a State agency, before funds may be disbursed to the entity, shall file with the disbursing agency a notarized copy of that entity's policy addressing conflicts of interest that may arise involving the entity's management employees and the members of its board of directors or other governing body. The policy shall address situations where any of these individuals may directly or indirectly benefit, except as the entity's employees or members of the board or other governing body, from the entity's disbursing of State funds, and shall include actions to be taken by the entity or the individual, or both, to avoid conflicts of interest and the appearance of impropriety.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**BUDGET REFORM STATEMENT**

**Sec. 12.** (a) The General Fund availability used in developing the budget enacted in this Act, is shown below:

	<u>1993-94</u>	<u>1994-95</u>	
		<u>Recurring</u>	<u>Nonrecurring</u>
<b>AVAILABILITY:</b>			
Estimated Remaining Balance from 1993-94	\$ -	\$ -	\$178.6
Unappropriated Balance from the 1993 Session	4.7	209.6	-
Revenue Forecast Increase	156.0	160.0	-
Disproportionate Share Receipts	-	-	94.0
Total Availability	<u>\$160.7</u>	<u>\$369.6</u>	<u>\$272.6</u>
<b>Appropriation Increases:</b>			
Current Operations	.5	168.3	24.9
Capitol Improvements	26.4	-	36.6
TOTAL APPROPRIATIONS	<u>\$ 26.9</u>	<u>\$168.3</u>	<u>\$61.5</u>
Unobligated Availability	133.8		
1993-94 Estimated Reversions	184.4	-	-
Total Credit Balance	<u>\$318.2</u>		

Earmarking:



Savings Reserve	79.6
Repairs and Renovations Reserve	60.0
Total Earmarking	<u>\$139.6</u>

Estimated Remaining Balance	\$178.6	\$201.3	\$211.1
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Estimate of Disproportionate Share Receipts to be deposited as a nontax revenue and reserved by the State Controller:

1993-94	\$114.2
1993-94 Estimated Overcollections	85.0
TOTAL	<u>\$199.2</u>

(b) The 1994-95 Unappropriated Balance of \$209.6 million from the 1993 Session stated in subsection (a) of this section is included in Total Availability as stated in Section 8 of Chapter 561 of the 1993 Session Laws. All other amounts in subsection (a) are increases in that Total Availability.

## PART 7. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Senators Daniel, Plyler, Odom, Ballance, Representatives Nesbitt, Diamont, Gist, Holt

### CRIMINAL JUSTICE INFORMATION NETWORK

**Sec. 13.** (a) Of the funds appropriated in this act to the Office of State Budget and Management, the sum of one hundred thousand dollars (\$100,000) for the 1993-94 fiscal year shall be used to study the development of a Criminal Justice Information Network that links together data in existing databases and networks. Any of these funds unexpended at the end of the 1993-94 fiscal year shall not revert but shall remain available to complete this study. Of the funds appropriated in this act to the Office of State Budget and Management for the 1994-95 fiscal year the sum of nine hundred thirty thousand dollars (\$930,000) shall be placed in a reserve, to be allocated as prescribed by the 1993 General Assembly, Regular Session 1994. This study shall include:

- (1) An assessment of the functionality of information currently used by the General Court of Justice, State and local law enforcement agencies, correction agencies, and State departments or agencies related to the criminal justice system and the juvenile justice system, and an evaluation of the need for systems integration or system enhancements, in particular the need for a comprehensive DWI database and for systems integration of the Department of Correction's Offender Management Information System;
- (2) A determination of the technical feasibility of incorporating all or portions of currently existing information systems and all or portions of new information systems into a comprehensive statewide Criminal Justice Information Network (CJIN);
- (3) An evaluation of feasible CJIN designs at no fewer than three alternative levels of costs (both capital and future operating), and a

clear description of the benefits and costs associated with each level;

- (4) An estimation of a development and implementation schedule for each level of costs, showing milestones to be achieved during each phase of the schedule, costs to be incurred during each phase, and any benefits and savings expected at intermediate stages of CJIN development and implementation;
- (5) An evaluation of alternative structures for CJIN management, including accountability for CJIN operations, criteria for membership or participation, procedures to prevent inappropriate or illegal access, and steps to assure data quality and accuracy;
- (6) Recommendations of measures for savings, efficiency, and effectiveness that will enable the General Assembly to gauge CJIN performance;
- (7) Assurances that the integrated CJIN shall be consistent and compatible with a comprehensive telecommunications plan as approved by the Information Resource Management Commission; and
- (8) A plan for a statewide integrated law enforcement communications system and a study of the costs of making that system available to local governments.

(b) There is created within the Office of State Budget and Management a Criminal Justice Information Network study committee to conduct the study required under this section. The study committee shall be appointed by the Governor in consultation with the Lieutenant Governor, the Attorney General, and the Chief Justice of the North Carolina Supreme Court. The Governor shall appoint no more than nine members to the study committee, and shall make the appointments based upon the appointees' knowledge, expertise, and responsibility within the criminal justice system, the juvenile justice system, and related areas. All State and local government agencies shall cooperate fully with the study committee. The study committee shall provide a monthly report on its progress (i) to the Chairs of the Senate and House Appropriations Committees, (ii) to the Chairs of the Senate and House Justice and Public Safety Appropriations Subcommittees, and (iii) to the Information Resources Management Commission established by G.S. 143B-426.21 at the regularly scheduled meetings of the Commission. The study committee shall report its final findings and recommendations to the General Assembly on or before February 1, 1995, and shall make an interim report by May 15, 1994.

## PART 8. ADVANCE STRUCTURED SENTENCING

Requested by: Representatives Barnes, Nesbitt, Diamont, Gist, Holt, Redwine, Michaux, Bowie, Senators Daniel, Plyler, Odom, Ballance  
**ADVANCE STRUCTURED SENTENCING/CRIMINAL JUSTICE PARTNERSHIP ACT/PAROLE NONVIOLENT INMATES CONFORM EFFECTIVE DATE TO STRUCTURED SENTENCING**

**Sec. 14.** (a) G.S. 15A-1340.10, as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-1340.10. *Applicability of structured sentencing.*

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 that occur on or after ~~January 1, 1995~~, October 1, 1994."

(b) Section 56 of Chapter 538 of the 1993 Session Laws reads as rewritten:

"Sec. 56. This act becomes effective ~~January 1, 1995~~, October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

(c) Section 1359 of Chapter 539 of the 1993 Session Laws reads as rewritten:

"Sec. 1359. This act becomes effective ~~January 1, 1995~~, October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

(d) Section 2 of Chapter 534 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act becomes effective January 1, 1994. Grants administered under this act shall become effective July April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

(e) Section 4 of Chapter 15 of the Session Laws of the Extra Session of 1994 is amended by deleting "January 1, 1995", and substituting "October 1, 1994".

## PART 9. DEPARTMENT OF CORRECTION

Requested by: Senators Ballance, Odom, Daniel, Plyler, Representatives Nesbitt, Diamont, H. Hunter, Holt, Bowie, Michaux

### LEASE JAIL SPACE

**Sec. 15.** (a) Funds appropriated in this act to the Department of Correction for leasing jail space from local governments to house inmates committed to the Department's custody shall be used for this purpose only and shall not be transferred.

(b) This section becomes effective July 1, 1994.

Requested by: Senators Odom, Ballance, Daniel, Plyler, Representatives Gist, Holt, Redwine, Nesbitt, Diamont, Michaux, Bowie

### DEPARTMENT OF CORRECTION CONTRACTS FOR IN-STATE/OUT-OF-STATE HOUSING OF INMATES

**Sec. 16.** (a) G.S. 148-37 reads as rewritten:

"§ 148-37. *Additional facilities authorized; contractual arrangements.*

(a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Department of Administration.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Any contract made under the authority of this section shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts for receiving federal, county and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts.

(c) In addition to the authority contained in subsections (a) and (b) of this section, and in addition to the contracts ratified by subsection (f) of this section, the Secretary of Correction may enter into contracts with any public entity for the confinement and care of State prisoners in any out-of-state public correctional facility when to do so would most economically and effectively promote the purposes served by the Department of Correction. Subject to the provisions of subsection (e) of this section, the combined authority contained in this subsection and in subsection (f) of this section may be used to house a maximum of 1,000 prisoners at any one time, which maximum shall include those housed on March 25, 1994, under contracts ratified by subsection (f) of this section. Prisoners may be sent to out-of-state correctional facilities only when there are no available facilities in this State within the State prison system to appropriately house those prisoners. Any contract made under the authority of this subsection shall expire not later than June 30, 1995, and shall be approved by the Department of Administration before the contract is executed.

(d) Prisoners confined in out-of-state correctional facilities pursuant to subsection (c) of this section shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The rules

regarding good time and gain time, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in those out-of-state correctional facilities. The operators of those out-of-state correctional facilities may promulgate any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by an out-of-state correctional facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction not inconsistent with the laws of the State of situs of the facility to defend themselves, to enforce the observance of discipline in compliance with correctional facility rules, to secure the person of a prisoner, and to prevent escape. Prisoners confined to out-of-state correctional facilities may be required to perform reasonable work assignments within those facilities.

(e) The Department of Correction shall not contract to house in non-State-owned facilities within the State more than a total of 1,500 inmates at any one time, excluding any beds in private substance abuse treatment centers authorized by the General Assembly. If the number of inmates housed in non-State-owned facilities pursuant to this section exceeds 500, then the maximum number of prisoners authorized to be housed out-of-state pursuant to subsection (c) of this section is reduced by the amount of the excess."

(b) G.S. 148-37 is amended by adding a new subsection to read:

"(f) Any contracts entered into by the Department of Correction with public contractors prior to March 25, 1994, for the out-of-state housing of inmates are ratified. The Department of Correction shall take such actions not inconsistent with the terms of the contracts so that without further approval by the General Assembly they are not effective for the confinement or care of State prisoners after June 30, 1995."

(c) Subsections (a) and (b) of this section are effective upon ratification, but subsection (a) of this section expires on June 30, 1995.

Requested by: Representatives Nesbitt, Diamont, Mavretic, Senators Daniel, Plyler, Odom, Ballance

#### **DEPARTMENT OF CORRECTION STUDY OF HOUSING OF CERTAIN FELONS OUTSIDE THE STATE OF NORTH CAROLINA**

Sec. 17. The Department of Correction shall study the issue of private, out-of-country placement of felons of 16 years of age or older who are sentenced to prison for 10 or more years in correctional facilities that equal or exceed the standards for adult correctional institutions of the American Correctional Association for construction and habitation and are:

- (1) Operated by any governmental unit within any U.S. state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; or
- (2) a. Operated by any corporation or other business entity organized under the laws of any U.S. state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and



- b. Located within the boundaries of any U.S. state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any nation that is a signatory of the North American Free Trade Agreement (NAFTA), as approved by the United States in Pub. L. No. 103-182, 107 Stat. 2057 (1993).

The Department shall report the results of this study to the 1993 General Assembly, Regular Session 1994.

Requested by: Representatives Nesbitt, Diamont, Gist, Holt, Redwine, Bowie, Michaux, Senators Odom, Ballance, Daniel, Plyler

#### **REPORT ON PLAN FOR CONTRACTING WITH PRIVATE SUBSTANCE ABUSE TREATMENT CENTERS**

**Sec. 18.** The Department of Correction shall report to the General Assembly by May 15, 1994, on its plan for the use of funds appropriated to it in this act for the 1994-95 fiscal year for contracts for 500 beds in private substance abuse treatment centers, not to exceed 100 beds at any one center, including any recommended changes in legislation necessary to authorize these contracts. The Department of Human Resources shall provide any technical assistance requested by the Department of Correction on the preparation of the plan.

Requested by: Senators Perdue, Martin of Guilford, Daniel, Plyler, Representatives Nesbitt, Diamont, Easterling, Holt, Bowie, Redwine

#### **BOOT CAMP FUNDS**

**Sec. 19.** (a) Of the funds appropriated in this act to the Department of Correction the sum of one million five hundred sixteen thousand six hundred sixty-six dollars (\$1,516,666) for the 1994-95 fiscal year shall be placed in a reserve for the operation of a new boot camp for youthful offenders to be brought on line in the 1994-95 fiscal year under the construction program provided for in this act. The boot camp shall operate according to the guidelines set forth for the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) in Chapter 1010 of the 1989 Session Laws.

(b) Of the funds appropriated in this act to the Department of Correction the sum of four hundred fifty-two thousand six hundred nineteen dollars (\$452,619) for the 1994-95 fiscal year shall be used to provide a post-boot camp program for probationers who are likely to benefit from such a program in order to assist them to become productive citizens and to remain free from criminal activity. The Department shall select up to 180 probationers to participate in the program, which shall include intensive probation supervision, substance abuse treatment and counseling, family contact, involvement, and counseling, consultation with appropriate personnel in the Department of Human Resources in establishing participation by probationers in appropriate community-based services, and other appropriate intervention.

(c) The Department of Correction shall evaluate the IMPACT program and the post-Boot Camp probation program funded under this section and report to the Joint Legislative Commission on Governmental Operations, the

Joint Legislative Corrections Oversight Committee, and the Fiscal Research Division prior to January 1, 1995, and annually thereafter. The evaluation of the IMPACT program shall compare that program's effectiveness, cost, and recidivism rate to other corrections programs for offenders aged 16-25. The evaluation of the post-Boot Camp probation program shall compare that program's effectiveness, cost, and recidivism rate to other probation programs for offenders aged 16-25.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont, H. Hunter, Holt, Redwine, Michaux, Bowie

#### **EXPAND PRISON SUBSTANCE ABUSE PROGRAMS**

**Sec. 20.** Of the funds appropriated in this act to the Department of Correction the sum of one million five hundred forty-five thousand three hundred forty-five dollars (\$1,545,345) for the 1994-95 fiscal year shall be used to establish a substance abuse program in five or more prisons located near urban areas throughout the State. Each program shall be established in accordance with Article 6 of Chapter 143B of the General Statutes. The funds shall be allocated such that each prison shall provide substance abuse services to no more than 100 inmates.

Requested by: Senators Shaw, Ballance, Odom, Daniel, Plyler, Representatives Holt, Gist, Redwine, H. Hunter, Michaux, Bowie

#### **WORK CAMP PILOT PROGRAM**

**Sec. 21.** (a) The Department of Correction shall develop plans for a pilot program in which the Department enters a partnership with a county or coalition of counties for the operation of a 340-bed work camp located at a site to be agreed upon by the Department of Correction and the county or coalition of counties. The county or coalition of counties shall agree to operate the work camp in exchange for authorization to use the minimum security inmates housed at the camp for work at public facilities and for any other suitable productive labor at sites within the county or coalition of counties entering the agreement.

The plan shall provide for making space available in the work camp in such a manner that judges passing sentence in the General Court of Justice within the county or counties participating in the pilot program may assign defendants to the prison work camp.

(b) The Department of Correction shall report on the plan developed pursuant to this section to the Joint Legislative Commission on Governmental Operations by May 15, 1994.

Requested by: Senators Martin of Guilford, Odom, Ballance, Daniel, Plyler, Representatives Nesbitt, Diamont, Easterling, Holt, Redwine, Bowie, Michaux

#### **DEPARTMENT OF CORRECTION/DEPARTMENT OF HUMAN RESOURCES JOINT PLAN/RESERVE FOR SUBSTANCE ABUSE TREATMENT PILOT PROGRAM FOR PAROLEES AND PROBATIONERS**

**Sec. 22.** (a) Of the funds appropriated in this act to the Department of Correction, the sum of five hundred eighty-three thousand dollars

(\$583,000) for the 1994-95 fiscal year shall be placed in a reserve for an intensive out-patient substance abuse treatment pilot program for parolees and probationers with serious substance abuse histories, to be allocated as prescribed by the 1993 General Assembly, Regular Session 1994. The Department of Correction and the Department of Human Resources shall jointly develop a plan for the development and implementation of an intensive out-patient substance abuse treatment pilot program for parolees and probationers with serious substance abuse histories. The Departments shall report this plan jointly to the General Assembly not later than May 15, 1994.

(b) In preparing the plan and the report, the Department of Correction and the Department of Human Resources shall consult with the following:

- (1) Staff from the Department of Correction Substance Abuse Program;
- (2) The Department of Correction Adult Probation and Parole Program;
- (3) The Department of Human Resources' Substance Abuse Services;
- (4) The Parole Commission, to be renamed the Post-Release Supervision and Parole Commission as of the effective date of the Structured Sentencing Act, Chapters 538 and 539 of the 1993 Session Laws;
- (5) Any other State or local programs the Departments consider necessary;
- (6) Representatives of business and industry who have an interest in job placement for ex-offender recovering substance abusers; and
- (7) Ex-offender recovering substance abusers.

Requested by: Senators Kerr, Cooper, Soles, Daniel, Plyler, Representatives Holt, Gist, Redwine, Michaux, Bowie

#### **PROBATION/PAROLE DIVERSION STUDY**

**Sec. 23.** The Department of Correction, Division of Adult Probation and Parole, shall study the feasibility of diverting probation and parole violators into residential community corrections centers similar to those currently being operated in other states. The study shall examine the possibility of housing probation and parole violators, who currently constitute approximately fifty-three percent (53%) of prison admissions in this State, in separate facilities operated as work camps, substance abuse treatment centers, or any other type of facilities designed to address the special problems of probation and parole violators. The Department of Correction, Division of Adult Probation and Parole, shall report its findings and recommendations to the 1994 Regular Session of the 1993 General Assembly.

Requested by: Senators Hoyle, Cooper, Soles, Daniel, Plyler, Representatives Nesbitt, Diamont, Redwine, Bowie, Michaux, Holt

#### **GREATER AFTER PRISON SUPPORT PROGRAM**

**Sec. 24.** (a) With respect to funds appropriated in this act to the Department of Correction, Division of Prisons, the Greater After Prison Support Program shall report quarterly to the Joint Legislative Commission

on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who complete the prerelease component of the program, and the number of clients who participate in the postrelease component of the program.

(b) The Department of Correction shall track the Greater After Prison Support program with an evaluation model consistent with existing models that show the impact of the program on participants regarding postrelease parole violations, rearrests, and recidivism rates. The Department shall provide a written evaluation of the program to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division by May 15, 1995.

(c) This section becomes effective July 1, 1994.

Requested by: Representatives Nesbitt, Diamont, Holt, Redwine, Michaux, Bowie  
Senators Daniel, Plyler, Odom, Ballance

#### **PROBATION/PAROLE STUDY**

**Sec. 25.** The Department of Correction shall study methods for reducing the paperwork required of probation and parole officers in order to allow more time for those officers to supervise probationers and parolees. The Department shall report its findings to the Joint Legislative Commission on Governmental Operations, to the Chairs of the House and Senate Appropriations Committees, and to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by May 15, 1994.

Requested by: Senators Lee, Daniel, Plyler, Representatives Nesbitt, Diamont, Holt, Redwine, Bowie, Michaux

#### **STUDY OF PRISON ENTERPRISES AND PRISON CANTEN FUND**

**Sec. 26.** The Department of Correction shall study the use of net profits from Prison Enterprises and Prison Canteen funds. The Department shall report the results of this study no later than May 15, 1994, to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

Requested by: Senator Daniel, Representatives Nesbitt, Diamont

#### **STUDY BUNKING OF INMATES IN SHIFTS**

**Sec. 27.** The Department of Correction shall study the issue of bunking inmates in shifts and shall report its findings and recommendations to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety. This report shall be made not later than May 15, 1994.

**PART 10. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

Requested by: Senators Cooper, Soles, Daniel, Plyler, Representatives Gist, Holt, Redwine, Bowie, Michaux

**VICTIMS ASSISTANCE NETWORK FUNDS**

**Sec. 28.** (a) Of the funds appropriated in this act to the Department of Crime Control and Public Safety, the sum of one hundred fifty thousand dollars (\$150,000) for the 1994-95 fiscal year shall be used to support the Victims Assistance Network. These funds shall be used by the Victims Assistance Network to perform the following functions under the direction of and as required by the Department of Crime Control and Public Safety:

- (1) Conduct surveys and gather data on crime victims and their needs;
- (2) Act as a clearinghouse for crime victims services;
- (3) Provide an automated crime victims bulletin board for subscribers;
- (4) Coordinate and support the activities of other crime victims advocacy groups;
- (5) Identify training needs of crime victims services providers and criminal justice personnel and coordinate training efforts for those persons; and
- (6) Provide other services as identified by the Governor's Crime Commission or the Department of Crime Control and Public Safety.

(b) This section becomes effective July 1, 1994.

Requested by: Senators Daniel, Carpenter, Plexico, Representatives Nesbitt, Diamont, Holt, Redwine, Michaux, Bowie

**STUDY NEED FOR ESTABLISHING FUND TO REWARD FOR INFORMATION LEADING TO CONVICTION OF DRUG DEALERS/STUDY FUNDING CRIME STOPPERS**

**Sec. 29.** (a) The Department of Crime Control and Public Safety, in consultation with the Department of Correction, shall study the need for a fund to reward persons providing information leading to the arrest and conviction of drug dealers. The Department shall report to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety. This report shall be made not later than May 15, 1994.

(b) The Department of Crime Control and Public Safety shall study the need for providing funds to North Carolina Crime Stoppers to be used as seed money for new crime stoppers programs and for providing funds for local crime stoppers programs. The Department of Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety. This report shall be made not later than May 15, 1994.



## PART 11. DEPARTMENT OF HUMAN RESOURCES

Requested by: Senators Perdue, Martin of Guilford, Daniel, Plyler, Ballance, Cooper, Odom, Soles, Representatives Barnes, Fitch, Easterling, Holt, H. Hunter, Nye, Nesbitt, Diamont, Redwine  
**SUPPORT OUR STUDENTS (S.O.S.) PROGRAM**

Sec. 30. (a) Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5A. S.O.S. Program.

"§ 143B-152.1. Establishment of program; purpose; goals.

(a) There is created in the Department of Human Resources the Support Our Students (S.O.S.) Program. The purpose of the program is to award grants to neighborhood- and community-based organizations to establish local S.O.S. programs that provide high quality after-school activities for school-aged children and provide for comprehensive, collaborative delivery of services by public and nonpublic agencies to these children. These services shall be designed to enrich and make a positive impact on the lives of school-aged children. These after-school activities may include activities after the regular school day and activities on days that students are not required to attend school.

(b) The goals of the program are to:

- (1) Reduce juvenile crime in local communities served by the program;
- (2) Recruit community volunteers to provide positive adult role models for school-aged children and to help supervise after-school activities;
- (3) Reduce the number of students who are unsupervised after school, otherwise known as 'latchkey' children;
- (4) Improve the academic performance of students participating in the program;
- (5) Meet the physical, intellectual, emotional, and social needs of students participating in the program and improve their attitudes and behavior; and
- (6) Improve coordination of existing resources and enhance collaboration so as to provide services to school-aged children effectively and efficiently.

"§ 143B-152.2. Definitions.

As used in this Part, 'school-aged children' means children enrolled in kindergarten through the ninth grade.

"§ 143B-152.3. Administration of the program.

The Department shall develop and implement the Support Our Students (S.O.S.) Program. The Department shall:

- (1) Sponsor a statewide conference each year for teams of interested representatives to provide background information and assistance regarding all aspects of the program;
- (2) Disseminate information regarding the program to interested neighborhood and community groups;
- (3) Develop and disseminate a request for applications to establish local S.O.S. programs;

- (4) Provide initial technical assistance to grant applicants and ongoing technical assistance as grants are implemented;
- (5) Administer funds appropriated by the General Assembly;
- (6) Monitor the grants funded;
- (7) Revoke a grant if necessary or appropriate;
- (8) Develop and implement a performance-based evaluation system to evaluate the program, in accordance with G.S. 143B-152.7(a);
- (9) Report on the program implementation to the General Assembly, the Joint Legislative Committee on Governmental Operations, and the Office of the Governor, in accordance with G.S. 143B-152.7(b); and
- (10) Adopt any rules necessary to implement this Part.

"§ 143B-152.4. Eligible applicants; application for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall submit to the Department an application that includes the following information:

- (1) Identification of one or more neighborhoods to be served by the local S.O.S. program, based on a needs assessment of existing conditions for school-aged children to be served. Data used in the needs assessment may include for each neighborhood to be served by a local program (i) dropout statistics, (ii) the number and percentage of school-aged children who participate in the federal subsidized lunch program, (iii) the number of suspensions and expulsions involving school-aged children, (iv) the number of children to be served, (v) the number and percentage of students with two working parents or one single parent to be served at a site, (vi) the incidence of juvenile crime in the neighborhood, and (vii) any other relevant or unique local demographic data.

Local authorities shall provide this or related information on a timely basis to local 501(c)(3) entities submitting applications to establish local S.O.S. programs;

- (2) A three-year plan that addresses data used in the needs assessment and that includes proposed goals and anticipated outcomes of the local S.O.S. program. The plan shall be prepared after consultation with local after-school programs, schools, community organizations or groups which have as their purpose assisting or helping school-aged children who are at risk of failing in school or entering the juvenile justice system, or other appropriate groups. In addition, the three-year plan shall provide for regular collaborative efforts to seek input and advice from parents of the students being served and from other citizens who reflect the demographic conditions of the students being served;
- (3) A statement of how grant funds would be used to address local problems and what other resources would be used to address the problems. This statement should include a list of services to be offered that are related to the goals and outcomes and should

include plans for recruiting volunteers to assist in the program's activities; and

- (4) A process for assessing on an annual basis the success of the local plan for addressing the goals of the local S.O.S. program.

"§ 143B-152.5. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local S.O.S. programs and administering grants to establish local S.O.S. programs.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.14, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality after-school services for school-aged children, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other neighborhoods and communities, and (v) any other factors which affect the well-being of school-aged children.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children with two working parents or one single parent to be served, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants.

"§ 143B-152.6. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the

cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program.

"§ 143B-152.7. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the S.O.S. Program. The Department shall design this system to:

- (1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
- (2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
- (3) Enable the Department and the General Assembly to determine whether to modify the S.O.S. Program; and
- (4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

The Department shall also report annually to the Joint Legislative Commission on Governmental Operations and to the Governor on the implementation of the S.O.S. Program.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local S.O.S. Program has met the local needs, goals, and anticipated outcomes as set forth in the grant applications."

(b) Of the funds appropriated to the Department of Human Resources for the S.O.S. Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars (\$200,000) to administer the S.O.S. Program, to provide technical assistance to applicants and to S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

(d) In awarding grants under the S.O.S. Program, the Department shall ensure that the continuation costs to the State of the Program in subsequent fiscal years do not exceed the cost of the Program for the 1994-95 fiscal year.

(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars (\$200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin



implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994.

Requested by: Senators Perdue, Martin of Guilford, Daniel, Plyler, Ballance, Cooper, Odom, Soles, Representatives Barnes, Fitch, Easterling, Holt, H. Hunter, Nye, Nesbitt, Diamont, Redwine

### **FAMILY RESOURCE CENTER GRANT PROGRAM**

**Sec. 31.** (a) Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5B. Family Resource Center Grant Program.

"§ 143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

(a) There is created in the Department of Human Resources the Family Resource Center Grant Program. The purpose of the program is to provide grants to establish family resource centers that provide services to children from birth through elementary school age and to their families that:

- (1) Enhance the children's development and ability to attain academic and social success;
- (2) Ensure a successful transition from early childhood education programs and child care to the public schools;
- (3) Assist families in achieving economic independence and self-sufficiency; and
- (4) Mobilize public and private community resources to help children and families in need.

(b) It is the intent of the General Assembly to encourage and support broad-based collaboration among public and private agencies and among people who reflect the racial and socioeconomic diversity in communities to develop initiatives that (i) prepare children to learn effectively and to have a successful school experience, (ii) enhance the ability of families to become advocates for and supporters of education for the children in their families, and (iii) enhance the ability of families to function as nurturing and effective family units.

(c) It is further the intent of the General Assembly that this program shall be targeted to those neighborhoods that have disproportionately high levels of (i) children who would be less likely to attain educational or social success, (ii) families with low incomes, and (iii) crime and juvenile delinquency.

"§ 143B-152.11. Administration of program.

The Department of Human Resources shall develop and implement the Family Resource Center Grant Program. The Department shall:

- (1) Sponsor a statewide conference for teams of interested representatives to provide background information and assistance regarding all aspects of the program;
- (2) Disseminate information regarding the program to interested local community groups;
- (3) Provide initial technical assistance and ongoing technical assistance to grant recipients;
- (4) Administer funds appropriated by the General Assembly;



- (5) Monitor the grants funded and the ongoing operations of family resource centers;
- (6) Revoke a grant if necessary or appropriate;
- (7) Report to the General Assembly and the Joint Legislative Commission on Governmental Operations, in accordance with G.S. 143B-152.15; and
- (8) Adopt rules to implement this Part.

"§ 143B-152.12. Eligible applicants: applications for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall identify the neighborhood or neighborhoods whose children and families will be served by a family resource center. The decision-making process for identifying and establishing family resource centers shall reflect the racial and socioeconomic diversity of the neighborhood or neighborhoods to be served.

(c) A grant application shall include a process for assessing on an annual basis the success of the local plan in addressing problems.

"§ 143B-152.13. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local family resource centers and administering grants to establish local family resource centers.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.5, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality services for children and their families, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other counties, (v) the availability of other resources or funds, (vi) the incidence of crime and juvenile delinquency, (vii) the amount needed to implement the proposal, and (viii) any other factors consistent with the intent of this Part.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children to be served with two working parents or one single

parent, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants.

"§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program.

"§ 143B-152.15. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the Family Resource Center Grant Program. The Department shall design this system to:

- (1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
- (2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
- (3) Enable the Department and the General Assembly to determine whether to modify the Family Resource Center Grant Program; and
- (4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local family resource center has met the local needs, goals, and anticipated outcomes as set forth in the grant application."

(b) Of the funds appropriated to the Department of Human Resources for the Family Resource Center Grant Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars (\$200,000) to administer the Family Resource Center Grant Program, to provide technical assistance to applicants and to local family resource centers, and to evaluate

the local family resource centers. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

(d) In awarding grants under the Family Resource Center Grant Program, the Department shall ensure that the continuation costs to the State of the program in subsequent fiscal years do not exceed the cost of the program for the 1994-95 fiscal year.

(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars (\$200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994.

Requested by: Senators Martin of Guilford, Perdue, Daniel, Plyler, Representatives Nesbitt, Diamont, Easterling, Nye, H. Hunter, Fitch, Holt, Gardner, Dickson

#### **ANNUAL EVALUATION OF WILDERNESS CAMP, COACH MENTOR TRAINING, AND GOVERNOR'S ONE-ON-ONE PROGRAMS**

**Sec. 32.** (a) The Department of Human Resources shall conduct an annual evaluation of the Wilderness Camp, Coach Mentor Training, and Governor's One-on-One Programs. The results of the evaluation shall be submitted to the State Auditor for further review and comment. The State Auditor shall transmit the evaluation along with any comments to the Joint Legislative Commission on Governmental Operations no later than October 1 of each year covering the program for the prior fiscal year. In conducting the evaluation, among other things, the focus shall be on directing youth toward long-term positive and productive noncriminal behavior. The review shall be qualitative and quantitative.

(b) In addition to the evaluations required in subsection (a) of this section, the Department of Human Resources shall make an interim evaluation of the Coach Mentor Training Program to the General Assembly not later than May 15, 1994. The interim evaluation shall provide information on how the Department plans to expend funds allocated for this Program.

Requested by: Senators Martin of Guilford, Perdue, Daniel, Plyler, Representatives Nesbitt, Diamont, Nye, Easterling, H. Hunter, Fitch, Holt, Gardner, Dickson

#### **GOVERNOR'S ONE-ON-ONE PROGRAM FUNDS ALLOCATION**

**Sec. 33.** Funds appropriated in this act to the Department of Human Resources, Division of Youth Services for the Governor's One-on-One Program shall be used to increase the funding for each of the existing programs and to provide funding for new programs to bring the number of programs up to at least a total of 65 programs at funding levels of thirty

thousand dollars (\$30,000) for each full-time program, fifteen thousand dollars (\$15,000) for each half-time program, and sixty thousand dollars (\$60,000) for each double program.

Requested by: Senators Perdue, Martin of Guilford, Winner of Mecklenburg, Daniel, Plyler, Representatives Nesbitt, Diamont, Easterling, Nye, H. Hunter, Fitch, Holt, Gardner, Dickson

#### ALTERNATIVES TO DETENTION PROGRAM

**Sec. 34.** (a) Of the funds appropriated in this act to the Department of Human Resources, Division of Youth Services, the sum of one hundred twenty-five thousand dollars (\$125,000) for the 1993-94 fiscal year and the sum of five hundred thousand dollars (\$500,000) for the 1994-95 fiscal year shall be used to establish the Alternatives to Detention Program in selected district court judicial districts that do not currently have them.

(b) The Department of Human Resources shall perform an evaluation of how the expanded Alternatives to Detention Program affects admission to juvenile detention facilities and shall report the results of this evaluation to the General Assembly by March 1, 1995.

(c) This section becomes effective April 1, 1994.

Requested by: Representatives Barnes, Easterling, Nye, Holt, H. Hunter, Fitch, Gardner, Dickson, Senators Martin of Guilford, Perdue, Tally, Daniel, Plyler

#### COMMUNITY-BASED ALTERNATIVE FUNDS

**Sec. 35.** (a) G.S. 7A-289.13 reads as rewritten:

"§ 7A-289.13. *Legislative intent.*

The General Assembly hereby declares its intent to reduce the number of children committed by the courts for delinquency to institutions operated by the Division of Youth ~~Development~~, Services, Department of Human Resources or other State agencies. The primary intent of this Article is to provide a comprehensive plan for the development of community-based alternatives to training school commitment so that 'status offenders' (defined by this Article to include 'those juveniles guilty of offenses which would not be violations of the law if committed by an adult') may be eliminated from the youth development institutions of this State. Additionally it is the intent of this legislation to provide noninstitutional disposition options in any case before the juvenile court where ~~such this disposition is deemed to be considered~~ in the best interest of the child and the community.

The policy and intent of the General Assembly in delinquency prevention and community-based services can be summarized as follows:

- (1) ~~Such~~ These programs ~~should~~ shall be planned and organized at the community level within the State, and ~~such these~~ these planning efforts ~~should~~ shall include appropriate representation from local government, local public and private agencies serving families and ~~children (both public and private)~~, children, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The role of the State ~~should~~ shall be to provide



- technical assistance, access to funding, and program information, and to assist local leadership in appropriate planning.
- (1a) As a prerequisite for receiving funding for Community-Based Alternatives, each county shall appoint a Community-Based Alternatives Youth Services Advisory Committee and shall update and revise the Committee's membership to ensure appropriate representation. As vacancies occur on Community-Based Alternatives Youth Services Advisory Committees or as new committees are appointed. The Committee members shall be reflective of the racial and socioeconomic diversity of the community.
- (1b) The Community-Based Alternatives Youth Services Advisory Committee required by subdivision (1a) of this section shall annually review the needs of troubled juveniles within its county, develop and advertise a Request for Proposal process, and submit a written Plan of Action for the expenditure of Community-Based Alternatives funds to the county for its approval. Upon the county's authorization, the Plan shall be submitted to the Department of Human Resources for final approval and subsequent implementation.
- (1c) The Division of Youth Services shall develop and implement uniform standards for each county's Community-Based Alternatives Youth Services Advisory Committee's annual certification and written requirements for program planning including a standard format for the Request for Proposal.
- (2) When a child is adjudicated to be within the juvenile jurisdiction of the district ~~court~~ court, ~~such~~ this child should be carefully evaluated through the available community-level ~~resources~~ (including resources, including mental health, social services, public health and other available medical services, public schools, and ~~others as appropriate~~ other appropriate services, prior to the juvenile hearing dealing with disposition so that the disposition of the court may be made with an understanding of the needs of the child and after consideration of the resources available to meet these needs.
- (3) It is contrary to the policy of the State for a court to separate a child from ~~his~~ the child's own family or commit a child to an institution or training school without a careful evaluation of the needs of the child.
- (4) The General Assembly finds that State and local government ~~should shall~~ be responsive to the need for community-based services ~~which~~ that would provide a viable alternative to commitment to an institution or training school. The General Assembly intends that State government should be responsive to this need through the Department of Human Resources by helping public and private local groups to plan, ~~develop~~ develop, and fund community-based programs, both residential and nonresidential. ~~It is recognized~~ The General Assembly recognizes that ~~such~~ these efforts will require the cooperation of several



major State departments in addition to Human Resources, such as the Department of Public Instruction, the Administrative Office of the Courts, and the Governor's Crime Commission. Commission of the Department of Crime Control and Public Safety.

- (5) It is the intent of the General Assembly that the Secretary of the Department of Human Resources develop a funding mechanism that will provide State support for programs that meet the standards as developed under the provisions of this Article.

The Secretary of the Department of Human Resources shall adopt rules to implement this section."

(b) Of the funds appropriated to the Department of Human Resources, Division of Youth Services, in this act, the sum of five million dollars (\$5,000,000) for the 1994-95 fiscal year shall be used to expand Community-Based Alternatives services. Of these funds, four million dollars (\$4,000,000) shall be allocated per capita among the counties, based on the number of children in the county between the ages of 10 and 17, and one million dollars (\$1,000,000) shall be allocated evenly among all counties.

The Community-Based Alternatives Youth Services Advisory Committee shall annually review the needs of troubled youth and submit a written Plan of Action to the county board of commissioners for approval, in accordance with G.S. 7A-289.13(b). In those counties that have a commitment rate above one person per thousand, the plan shall describe how these additional funds will be used to reduce the county commitment rate. In those counties that have a commitment rate at or less than one per thousand, the plan shall specify how the funds will be used to maintain or reduce the commitment rate. The plan shall provide for the county to use funds appropriated in this section to purchase care or services from local public agencies and private nonprofit 501(c)(3) corporations and housing authorities providing delinquency prevention programs or community-based services. The plan shall emphasize the provision of services for children against whom a complaint of delinquency has been made, regardless of whether the juvenile was diverted to a community resource or adjudicated delinquent. The approved plan shall then be submitted to the Division of Youth Services for approval.

(c) These funds shall be matched by each county as currently required by the Division of Youth Services.

Requested by: Senators Martin of Guilford, Perdue, Daniel, Plyler, Representatives Nesbitt, Diamont, Easterling, Nye, H. Hunter, Fitch, Holt, Gardner, Dickson

#### **DHR STUDY OF DIVISION OF YOUTH SERVICES' PROGRAMS AND SERVICES**

**Sec. 36.** (a) The Department of Human Resources shall conduct a comprehensive study of the Division of Youth Services' juvenile justice system in order to ensure the efficacy, cost-effectiveness, and optimal utilization of the system and its continuum of services. The Department may contract with an independent consultant to assist it in its study. The Administrative Office of the Courts, the Department of Correction, and any

other State or local agencies the Department considers have a role in the juvenile justice system shall cooperate with the Department in its study.

The Department shall convene an advisory panel to assist it in its study. This panel shall consist of the Administrative Officer of the Courts, as many juvenile court judges as the Department considers necessary, three Senators recommended by the President Pro Tempore of the Senate, three Representatives recommended by the Speaker of the House of Representatives, and any others the Department considers necessary.

Members of this advisory panel shall receive the subsistence and travel expenses set forth in Chapter 120 and Chapter 138 of the General Statutes, as appropriate.

(b) This study shall include:

- (1) An analysis, including an assessment of safety risks to community and staff, of the current training school population;
- (2) An assessment of adult and juvenile recidivism rates of recent training school residents;
- (3) An analysis of the cost and success of dispositions of juvenile offenders who are placed on probation or assigned to other programs;
- (4) An evaluation of the Community-Based Alternative Program;
- (5) An assessment of the juvenile offender systems and programs used in other states;
- (6) The development of a plan for an early warning system by which potential youthful offenders are identified at a very early age so that intervention can be made to prevent adverse outcomes;
- (7) Diagnostic assessment of all youth in training schools and detention centers to determine if each youth has been properly placed. The assessment criteria shall conform to standards developed by the Division of Youth Services, juvenile court counselors, and mental health/substance abuse services professionals;
- (8) An evaluation of vocational education in the training schools;
- (9) An analysis of other services and treatments offered in training schools;
- (10) Alternatives to detention and to training schools;
- (11) Proposals for appropriate reforms of the current dispositional system that will help juvenile offenders become productive citizens, control costs, and protect the public safety;
- (12) Recommendations to enable accountability and evaluation of outcomes of juvenile programs and dispositions, including recommendations for system changes that will enable tracking of participants in juvenile offender programs into the adult criminal and other juvenile offender programs; and
- (13) Recommendations concerning whether a commission should be established to periodically review and evaluate the juvenile justice system and the composition of such a commission if established.

(c) The study components should be measured by whether the juvenile justice system provides:

- (1) Skills to develop positive self-concept, the ability to analyze and understand consequences of their choices, the ability to accept responsibility for one's own action, and to develop positive interpersonal relationships;
- (2) Opportunity for educational achievement and acquisition of usable job skills;
- (3) Skills for remaining free from substance abuse, violence, and criminal activity;
- (4) Opportunity to involve family members and other significant individuals in the rehabilitative and treatment processes;
- (5) Effective support systems for juveniles and their family members that are designed to increase the prospect of achieving and maintaining long-term program goals;
- (6) Program methodologies and staff training and development that is consistent and correlates with program goals; and
- (7) Evidence of effective and efficient client-focused collaborative and cooperative service delivery arrangements with other public and private agencies.

(d) The Department shall complete this study by November, 1, 1994, and shall report the results of this study to the 1995 General Assembly by March 1, 1995.

(e) Of the funds appropriated to the Department of Human Resources, the sum of one hundred fifty thousand dollars (\$150,000) for the 1993-94 fiscal year shall be used to fund this study. Any of these funds that are unexpended at the end of the 1993-94 fiscal year shall not revert but shall remain available to complete the study required by this section.

Requested by: Representatives Nesbitt, Diamont, Nye, Easterling, H. Hunter, Fitch, Holt, Gardner, Dickson, Senators Daniel, Plyler

#### **DIRECTOR OF JOINT SECURITY FORCE**

**Sec. 37.** The Secretary of the Department of Human Resources shall designate the Director of the Juvenile Evaluation Center as the Director of the Joint Security Force established in G.S. 122C-421, serving the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County, and having the power prescribed by G.S. 7A-571(4) and G.S. 122C-421 outside the territory embraced by the named centers but within the confines of Buncombe County.

#### **PART 12. JUDICIAL DEPARTMENT**

Requested by: Senators Kerr, Cooper, Soles, Daniel, Plyler, Representatives Nesbitt, Diamont, Holt, Redwine, Bowie, Michaux

#### **DEFERRED PROSECUTION STUDY**

**Sec. 38.** The Administrative Office of the Courts, in consultation with the North Carolina Conference of District Attorneys, shall study the problem of underutilization of the deferred prosecution program established in G.S. 143B-475.1 and shall recommend methods for encouraging greater use of

the program across the State. The Administrative Office of the Courts shall report its findings and recommendations to the 1995 General Assembly.

Requested by: Senators Conder, Ballance, Odom, Daniel, Plyler, Representatives Nesbitt, Diamont, Holt, Redwine, Michaux, Bowie

#### **DISTRICT ATTORNEY ACCESS TO POLICE INFORMATION NETWORK**

**Sec. 39.** (a) Funds appropriated in this act to the Judicial Department for the 1993-94 fiscal year to provide access to the Police Information Network that are not expended by the end of the fiscal year shall not revert, but shall remain available for the next fiscal year.

(b) This section becomes effective April 1, 1994.

Requested by: Representatives Nesbitt, Diamont, Gist, Holt, Redwine, Bowie, Michaux, Senators Daniel, Plyler, Cooper, Soles

#### **TEEN COURT PROGRAM FUNDS**

**Sec. 40.** (a) Of the funds appropriated in this act to the Judicial Department, the sum of seventy-five thousand dollars (\$75,000) for the 1994-95 fiscal year shall be used to develop and implement "teen court" programs in judicial districts to be selected by the Administrative Office of the Courts. These programs are to be made available to junior and senior high schools within the selected judicial districts. Any grant application shall be reviewed and approved by the chief district court judge for the district in which the program is to be conducted. Grants from the Administrative Office of the Courts to any local agency or authority shall be used to develop and implement programs that meet either or both of the following objectives:

- (1) Development and implementation of a "teen court" program as a community resource for the selected judicial districts. Cases in which a juvenile allegedly commits an offense within the jurisdiction of the juvenile court, as specified in the teen court plan, which offense, if committed by an adult, would constitute a crime or infraction, may be diverted by law enforcement or the court, or referred by Intake Services, to "teen court" to be "sentenced" by a jury of the juvenile's peers. The plan shall specify the kinds of offenses that are appropriate for referral to teen court. "Sentences" may include counseling, restitution, curfews, or community service, as well as other rehabilitative measures; or
- (2) "Teen court" model programs made available to all junior and senior high school students in the selected judicial districts to handle problems that develop at school but that have not been turned over to the juvenile authorities.

(b) The Administrative Office of the Courts shall distribute the funds to grantees in quarterly payments beginning July 1994 and ending April 1995. Grantees shall provide the Administrative Office of the Courts with quarterly reports as to the expenditure of funds and relevant statistical data.

(c) Grantees of the funds shall report at least annually to the Administrative Office of the Courts and to officials of the selected judicial

districts. The Administrative Office of the Courts shall evaluate the effectiveness of the programs and report its findings and any recommendations by March 15, 1995, to the Joint Legislative Commission on Governmental Operations and to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

(d) In addition to the reports required in subsection (d) of Section 80 of Chapter 561 of the 1993 Session Laws, the Administrative Office of the Courts shall make an interim report by May 15, 1994, on the effectiveness of the Cumberland County "Teen Court" program established pursuant to Section 80 of Chapter 561 of the 1993 Session Laws.

Requested by: Representatives Nesbitt, Diamont, Gist, Holt, Redwine, Michaux, Bowie, Senators Daniel, Plyler

#### **RESERVE FOR COURT/DRUG TREATMENT PROGRAM**

**Sec. 41.** There is created in the Judicial Department a Reserve for Court/Drug Treatment Program. Of the funds appropriated in this act to the Judicial Department, the sum of eight hundred thousand dollars (\$800,000) for the 1994-95 fiscal year shall be held in this reserve. The funds in this reserve shall be allocated as prescribed by the 1993 General Assembly, Regular Session 1994.

### **PART 14. INTERVENTION/PREVENTION INITIATIVES**

Requested by: Representatives Barnes, Fitch, Easterling, Gardner, H. Hunter, Rogers, Black, Russell, Arnold, Redwine, Bowie, Nesbitt, Diamont, Holt, Hensley, Senators Gunter, Perdue, Martin of Guilford, Daniel, Plyler, Ballance, Cooper, Odom, Soles

#### **SCHOOL-BASED PROGRAM GRANTS**

**Sec. 42.** (a) The General Assembly finds that:

- (1) Growing numbers of children live in conditions that place them at risk of school failure;
- (2) The provision of school and support services to these children and their families by public and nonprofit agencies is fragmented and does not prepare these children to learn effectively and have a successful school experience;
- (3) The lack of collaboration among schools, families, local agencies, and other groups involved in family support and youth development activities results in the inefficient and ineffective use of resources to meet the needs of these children;
- (4) Schools are dedicating an increasing amount of their time and resources to responding to disruptive and violent behavior rather than fulfilling their mission to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential;
- (5) The relationships between school failure, disruptive and violent behavior in schools, unemployment, and criminal behavior are clear;
- (6) Responding to the needs of students who are at risk of school failure and providing for a safe and secure learning environment



are cost-effective because it enables the State to substitute preventive measures for expensive crisis intervention; and

- (7) Differing local needs and local resources necessitate the development of locally generated, community-based plans that coordinate and leverage existing resources, not the imposition of uniform and inflexible, State-mandated plans;

therefore, of the funds appropriated to Aid to Local School Administrative Units by this act, the sum of twelve million dollars (\$12,000,000) shall be used for the 1994-95 fiscal year to implement the Intervention/Prevention Grant Program for North Carolina School Children.

(b) Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 8. Intervention/Prevention

Grant Program for North Carolina School Children.

"§ 115C-238.40. Establishment of program; purpose.

There is established the Intervention/Prevention Grant Program for North Carolina School Children. The purpose of the program is to provide grants to local school administrative units for locally designed innovative local programs that target juvenile crime by (i) enhancing educational attainment through coordinated services to respond to the needs of students who are at risk of school failure and at risk of participation in juvenile crime and (ii) providing for a safe and secure learning environment.

"§ 115C-238.41. Applications for grants.

(a) A local school administrative unit may apply for a grant, or up to three adjacent local school administrative units may apply jointly for a grant.

(b) In preparing grant applications, an applicant shall consult with a local task force appointed by the county board of commissioners and comprised of educators, parents, students, community leaders, and representatives of the juvenile justice system, human services, and nongovernmental agencies providing services to children. To the extent possible, the task force shall be representative of the racial and socioeconomic composition of the geographic area to be served by the grant. If a local school administrative unit or the geographic area covered by a grant proposal is located in more than one county, the board of commissioners of the counties shall jointly appoint the task force.

(c) The application shall include the following information:

- (1) Data on the incidence of juvenile crime in the geographical area to be served by the grant. Sources of data may include the chief juvenile court counselor in the judicial district, the clerk of superior court, and local law enforcement officials.
- (2) An assessment of local resources from all sources for, and local deficiencies with regard to, responding to the needs of children who live in conditions that place them at risk of school failure. This assessment shall be prepared by the local task force.
- (3) A detailed plan for removing barriers to success in school that exist for these children and for minimizing disruptive and violent behavior among all students. This plan shall include proposed goals and anticipated outcomes, prepared after consultation with the task force. This plan shall provide for the establishment or

expansion of programs that have components based on one or more of the following models or other collaborative models:

- a. School-based Resource Center Model. -- A School-based Resource Center is a school-based center that coordinates the delivery of comprehensive and integrated services in or near a school to children from kindergarten through the eighth grade and their families. Services are provided through broad-based collaboration among governmental and nongovernmental agencies and persons reflective of the racial and socioeconomic diversity in a community. Services are designed to (i) prepare children to attain academic and social success, (ii) enhance the ability of families to become advocates for and supporters of education for the children in their families, (iii) provide parenting classes to the parents of children who are at risk of school failure, and (iv) otherwise enhance the ability of families to function as nurturing and effective family units.
- b. After School Program Model. -- An After School Program is a program that provides high quality educationally appropriate and recreational activities to students after the regular school day. The program may be targeted toward providing academic support for students who perform significantly below their age-level peers or for students with learning disabilities. Local boards of education may permit teachers to adjust their work schedules so they can work in the program.
- c. Cities in Schools Program Model. -- A Cities in Schools Program is a community partnership among public agencies, private nonprofit agencies, volunteer organizations, and local businesses that delivers services to students who are at risk of dropping out of school or who display discipline problems. Services offered are based on an assessment of local needs and resources.
- d. Alternative Learning Program Model. -- An Alternative Learning Program is a program that provides individualized programs outside of a standard classroom setting in a caring atmosphere in which students learn the skills necessary to redirect their lives and return to a standard classroom setting. The program should maintain State standards and may include smaller classes and lower student/teacher ratios, school-to-work transition activities, modification of curriculum and instruction to meet individual needs, flexible scheduling, and necessary academic, vocational, and support services for students and their families. Services may also include appropriate measures to correct disruptive behavior, teach responsibility, good citizenship, and respect for rules and authority.

The goals of the alternative school programs should be to (i) reduce the school dropout rate through improved student attendance, behavior, and educational achievement; and (ii) increase successful school-to-work transitions for students through educationally linked job internships, mentored job

shadowing experiences, and the development of personalized education and career plans for participating students.

- e. Safe Schools Program Model. -- A Safe Schools Program is a locally designed program for making schools safe for students and school employees. The program may involve peer mediation and conflict resolution activities.
- (4) A statement of whether and to what extent the local board of education intends to contract with local, private, nonprofit 501(c)(3) corporations to staff, operate, or otherwise provide services for one or more elements of the plan. Local boards are encouraged to contract for services, when appropriate.
- (5) A statement of (i) how the grant funds would be used to address these local problems, (ii) what other resources, including Safe Schools Grants, Chapter 1 funds, Chapter 2 block grant funds, dropout prevention funds, Basic Education Program funds, remediation funds, small school system supplemental funds, and low-wealth counties supplemental funds, would be used to address the problems, and (iii) how all available community resources and the components of the proposed plan would be coordinated to enhance the effectiveness of existing services and of services proposed in the plan.
- (6) A statement of how the proposed plan would assist a local school administrative unit in implementing the local school improvement plan.
- (7) A process for assessing on an annual basis the success of the local plan in addressing problems.

"§ 115C-238.42. Review of applications.

(a) The Superintendent of Public Instruction shall appoint a State task force to assist the Superintendent in reviewing grant applications. The State task force shall include representatives of the Department of Public Instruction, the Department of Human Resources, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Superintendent considers appropriate. In appointing the State task force, the Superintendent shall consult with the Secretary of Human Resources in an effort to coordinate the membership of this State task force and those appointed by the Secretary pursuant to G.S. 143B-152.5 and G.S. 143B-152.13.

In reviewing grant applications, the Superintendent and the State task force shall consider the prevalence of underserved students and families in low-income neighborhoods and in isolated rural areas in the area for which the grant is requested, the severity of the local problems with regard to children at risk of school failure and with regard to school discipline, whether the proposed program meets State standards, and the likelihood that the locally designed plan will deal with the problems successfully.

During the review process, the Superintendent may recommend modifications in grant applications to applicants.

(b) The Superintendent shall submit recommendations to the State Board of Education on which applicants should receive grants and the amount they should receive.

"§ 115C-238.43. Award of grants.

In selecting grant recipients, the State Board shall consider (i) the recommendations of the Superintendent, (ii) the geographic location of the applicants, and (iii) the demographic profile of the applicants. After considering these factors, the State Board shall give priority to grant applications that will serve areas that have a high incidence of juvenile crime and that propose different approaches that can serve as models for other communities.

The State Board shall select the grant recipients prior to July 15, 1994, for local programs that will be in operation at the beginning of the 1994-95 school year. The State Board shall select the grant recipients prior to October 1, 1994, for local programs that will be in operation after the beginning of the 1994-95 school year.

"§ 115C-238.44. Requests for modifications of grants or for additional funds to implement grants.

A grant recipient may request a modification of a grant or additional funds to implement a grant through the grant application process. The request shall be reviewed and accepted or rejected in the same manner as a grant application.

"§ 115C-238.45. Administration of the grant program.

The Superintendent of Public Instruction shall administer the grant program, under the direction of the State Board of Education. The Department of Public Instruction shall provide technical assistance to grant applicants and recipients.

"§ 115C-238.46. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Public Instruction, local boards of education, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Superintendent, after consultation with the Secretary of Human Resources, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program.

"§ 115C-238.47. Program evaluation; reporting requirements.

(a) The Department of Public Instruction shall develop and implement an evaluation system, under the direction of the State Board of Education, that will assess the efficiency and effectiveness of the Intervention/Prevention Grant Program. The Department shall design this system to:

- (1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
- (2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;



- (3) Enable the Department and the General Assembly to determine whether to modify the Intervention/Prevention Grant Program; and
- (4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The State Board of Education shall report to the General Assembly and the Joint Legislative Education Oversight Committee by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The State Board of Education shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Education Oversight Committee on (i) the implementation of the program, (ii) the results of the program evaluation, (iii) how the funds appropriated by the General Assembly for the program are being used, (iv) additional funds required to implement the program, and (v) any necessary modifications to the program."

(c) The Department of Public Instruction shall use funds within its budget for travel and for supplies and materials for the 1993-94 fiscal year to implement subsection (b) of this section prior to July 1, 1994.

(d) Subsection (a) of this section becomes effective July 1, 1994. The remainder of this section is effective upon ratification.

Requested by: Representatives Barnes, Rogers, Black, Nesbitt, Diamont, Holt, Bowie, Russell, Arnold, Fitch, Easterling, Gardner, H. Hunter, Hensley, Senators Gunter, Perdue, Martin of Guilford, Daniel, Ballance, Cooper, Odom, Plyler, Hartsell, Shaw, Soles

#### **LOCAL PROGRAMS TO ASSIST CHILDREN AT RISK OF SCHOOL FAILURE**

Sec. 43. Of the funds appropriated to Aid to Local School Administrative Units, the sum of eighteen million two hundred thirty-seven thousand one hundred twenty dollars (\$18,237,120) for the 1994-95 fiscal year shall be used for positions to implement locally designed initiatives to provide services to students who are at risk of school failure and to the students' families. These funds shall be allocated by the State Board of Education to local school administrative units on the basis of average daily membership for instructional support personnel other than library media specialists, with a minimum of one position allotted per local school administrative unit.

The Superintendent of Public Instruction shall not recommend and the State Board not grant waivers pursuant to G.S. 115C-238.6 pertaining to the purposes for which these funds may be used unless:

- (1) The requested waiver is to convert one or more of these instructional support positions to teacher positions;
- (2) The conversion to a teacher position is at the average cost of the instructional support position being converted; and
- (3) The position converted is to be used for a certified teacher who has special skills or training that are necessary to work with children in an alternative learning program and that teacher is assigned full-time to an alternative learning program.



Local boards of education are encouraged to design and implement plans that coordinate and leverage existing resources in the public schools, local governments, nonprofit entities, and the community at large. Local school administrative units that receive Intervention/Prevention School grants are encouraged to design and implement plans that coordinate the use of these funds with the programs funded with Intervention/Prevention Program grants. Adjoining local school administrative units are encouraged to design and implement joint programs.

The State Board of Education shall make a preliminary report to the Joint Legislative Education Oversight Committee in November 1994 on the programs implemented at the local level with these funds. The State Board of Education shall make a final report to the General Assembly on these programs in February 1995.

## **PART 15. GENERAL ASSEMBLY**

Requested by: Senators Sherron, Daniel, Plyler, Representatives Nesbitt, Diamont

### **TASK FORCE ON OFFENDERS' DRUG AND ALCOHOL REHABILITATION AND EDUCATION**

**Sec. 44.** (a) There is created the Task Force on Offenders' Drug and Alcohol Rehabilitation and Education to study methods for providing alcohol and drug treatment programs and educational programs to offenders. The Task Force shall be composed of eight members:

- (1) The Governor, who shall chair the Task Force;
- (2) The Secretary of Correction;
- (3) The Assistant Secretary of Correction for Substance Abuse;
- (4) The Secretary of Human Resources;
- (5) The Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Department of Human Resources;
- (6) The Chief of the Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities and Substance Abuse, Department of Human Resources;
- (7) The President of the North Carolina Community College System; and
- (8) The Superintendent of Public Instruction.

(b) The Task Force on Offenders' Drug and Alcohol Rehabilitation and Education shall:

- (1) Develop a plan and a cost estimate for converting a number of prison facilities into intensive drug and alcohol rehabilitation centers, for identifying inmates with drug and alcohol problems, and for mandating proven treatment procedures for those inmates;
- (2) Develop a plan and a cost estimate for ensuring that persons sentenced to prison for crimes involving drugs or for crimes in which alcohol or drugs were a causative or contributing factor receive a full year of drug rehabilitation as a part of their sentence. The plan shall provide for intensive drug therapy and gradual reintegration into society as the treatment progresses. The

plan shall also provide for parole conditioned upon total abstinence from alcohol and drugs, to be enforced through strict testing, with violators returned to prison for the full term of the original sentences.

- (3) Develop a plan and a cost estimate for establishing an extension program through either the Department of Community Colleges or the Department of Public Instruction to provide a General Education Development diploma (GED) to all offenders who have not obtained a high school diploma or a GED. The plan shall include making continued work towards a GED a condition of probation or parole whenever necessary to ensure that the offender does obtain a GED.

The Task Force shall report its findings and recommendations to the General Assembly by May 15, 1994.

Requested by: Senators Gulley, Daniel, Plyler, Representatives Nesbitt, Diamont

#### **JOINT DEPARTMENTAL STUDY OF LIFE IMPRISONMENT SENTENCE**

**Sec. 45.** The Department of Correction, the Department of Crime Control and Public Safety, and the Department of Justice shall study the effect on the criminal justice system of having the sentence of life imprisonment without parole for certain criminal offenses and shall also consider whether the sentence of life imprisonment without parole has served as a deterrent with regard to those crimes for which it may be imposed, any other impact the sentence may have had on the crime rate generally, the fiscal impact that the sentence has had on the State's finances, and the projected costs to the State if the sentence continues to be imposed. The Department of Correction, Department of Crime Control and Public Safety, and Department of Justice shall report to the General Assembly, the Joint Legislative Commission on Governmental Operations, and the appropriations committees in the House of Representatives and the Senate by January 1, 2005, on their findings and recommendations regarding the sentence of life imprisonment without parole.

Requested by: Senators Perdue, Martin of Guilford, Daniel, Plyler, Representatives Nesbitt, Diamont, Easterling

#### **REPORT ON ANTICRIME INITIATIVES**

**Sec. 46.** Every agency of the State to which funds have been appropriated in this act for implementing program initiatives for reducing crime shall report to the Joint Legislative Corrections Oversight Committee at its first meeting and quarterly thereafter. The report shall provide information on the expenditure of the funds, program implementation progress, and results to date. The purpose of the reports is to provide the General Assembly and the citizens of this State with information on the progress and success of initiatives developed to reduce crime in North Carolina's communities.

Requested by: Senators Cochrane, Hartsell, Shaw, Odom, Cooper, Daniel, Plyler, Representatives Nesbitt, Diamont, Nye, Easterling, Redwine, Fitch, McAllister, Berry, Balmer, Creech, H. Hunter

#### WELFARE REFORM STUDY

**Sec. 47.** (a) There is created the Legislative Study Commission on Welfare Reform. The Commission shall consist of 14 members as follows:

- (1) Five members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (2) Two persons appointed by the Speaker of the House of Representatives who are not members of the General Assembly;
- (3) Five Senators appointed by the President Pro Tempore of the Senate; and
- (4) Two persons appointed by the President Pro Tempore of the Senate who are not members of the General Assembly.

(b) The Speaker of the House of Representatives shall designate one representative as cochair and the President Pro Tempore of the Senate shall designate one Senator as cochair.

(c) The Commission shall study the whole issue of the need for welfare reform in light of the current social crisis caused, in part, by the rapidly increasing incidence of violent crimes. This study shall include:

- (1) A reexamination of the whole purpose of the welfare system and an identification of those disincentives to raising responsible, independent participants in society that are built into the system;
- (2) An analysis of the federal welfare reform proposals and of other states' initiatives; and
- (3) A compilation and detailed examination, including detailed fiscal analysis, of proposals to reform the welfare system.

(d) The reexamination prescribed by subdivision (1) of this subsection shall specifically include consideration of the following bills introduced in the 1993 General Assembly, Extra Session 1994: House Bill 141, introduced by Representative Fitch, House Bill 209, introduced by Representative McAllister, House Bill 80, introduced by Representative Berry, Senate Bill 129, introduced by Senator Cochrane, and any other welfare reform initiatives introduced in this session.

(e) The Commission may submit an interim report to the General Assembly on or before the first day of the 1994 Regular Session of the 1993 General Assembly and shall submit a final report, including a complete proposal for welfare reform, to the 1995 General Assembly within one week of its convening, by filing the report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate.

(f) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

(g) Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1 or G.S. 138-5, as appropriate.

(h) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission or committee, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

(i) When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment.

(j) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

Requested by: Senators Forrester, Cochrane, Hartsell, Shaw, Ballance, Odom, Daniel, Plyler, Representatives Nesbitt, Diamont

#### **LRC STUDY ON THE CAUSES OF CRIME IN NORTH CAROLINA**

**Sec. 48.** (a) The Legislative Research Commission may study the causes of crime in North Carolina. This study may include:

- (1) Review of available information regarding the causes of crime in North Carolina, including relevant criminological, behavioral, sociological, and social sciences data, and other pertinent information on crime;
- (2) Review of the relationship between adolescent childbearing and criminal behavior of adolescent parents and of children born to adolescent parents;
- (3) Conducting public hearings on the causes of crime in North Carolina;
- (4) Review of studies regarding the causes of crime conducted by public and private entities of other jurisdictions; and
- (5) Development of legislative recommendations calculated to address effectively the root causes of crime in North Carolina.

(b) The LRC may make its final report on the study authorized under this section to the 1995 General Assembly.

Requested by: Senators Simpson, Cochrane, Hartsell, Shaw, Cooper, Soles, Daniel, Plyler, Representatives Nesbitt, Diamont

#### **JOINT LEGISLATIVE CORRECTIONS OVERSIGHT COMMITTEE**

**Sec. 49.** (a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

##### **"ARTICLE 12J.**

##### **"Joint Legislative Corrections Oversight Committee.**

**"§ 120-70.93. *Creation and membership of Joint Legislative Corrections Oversight Committee.***

**The Joint Legislative Corrections Oversight Committee is established. The Committee consists of 16 members as follows:**

- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and
- (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1995 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

"§ 120-70.94. Purpose and powers of Committee.

(a) The Joint Legislative Corrections Oversight Committee shall examine, on a continuing basis, the correctional system in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve the correctional system and to assist that system in realizing its objectives of protecting the public and of punishing and rehabilitating offenders. In this examination, the Committee shall:

- (1) Study the budget, programs, and policies of the Department of Correction, to determine ways in which the General Assembly may improve the effectiveness of that Department;
- (2) Examine the effectiveness of the Department of Correction in implementing the public policy stated in G.S. 148-26 of providing work assignments and employment for inmates as a means of reducing the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release; and
- (3) Study any other corrections matters that the Committee considers necessary.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"§ 120-70.95. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Corrections Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of



a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

(b) This section becomes effective July 1, 1994.

Requested by: Senators Odom, Daniel, Plyler, Representatives Nesbitt, Diamont

### **LRC FARM CAMP STUDY**

**Sec. 50.** The Legislative Research Commission may study the feasibility of establishing a Farm Camp Program for troubled youth. For purposes of this study, the term "troubled youth" means: (i) juvenile delinquents who would otherwise be committed to training schools, and (ii) individuals under the age of 21 years who are guilty of nonviolent felony offenses. The Department of Correction, the Department of Human Resources, the Division of Youth Services, and the Administrative Office of the Courts shall cooperate in the study. The study may include:

- (1) An analysis of similar work and community service programs established for troubled youth in this State and other states, which analysis shall include data on the recidivism rate of the troubled youth participating in the programs, the effects of the programs on the farm communities in which the youth are working, and the success rate of incorporating the youth in the work force after they leave the programs;
- (2) A review of academic and professional studies regarding the effects of community involvement and participation on youth, including an examination of the beneficial effects of providing troubled youth with the opportunity to develop work skills, to become productive citizens, and to develop self-confidence, independence, and self-esteem;
- (3) An analysis of whether the Farm Camp Program will reduce the populations of the State prisons and training schools and any other anticipated effects it will have on the Department of Correction, the Department of Human Resources, and the Division of Youth Services;
- (4) A review of information from the North Carolina Farm Bureau Federation, Inc.;
- (5) An examination of the federal and State laws that affect troubled youth; and
- (6) A fiscal analysis of the costs of establishing and operating a Farm Camp Program for a five to 10-year period.

Requested by: Senators Kincaid, Soles, Daniel, Plyler, Representatives Nesbitt, Diamont

**COURTS COMMISSION STUDY MAGISTRATES  
INFRACTIONS/LEVEL I MISDEMEANORS**

**Sec. 51.** The North Carolina Courts Commission shall study whether to:

- (1) Expand the jurisdiction of magistrates to allow them to dispose of infractions;
- (2) Facilitate the procedure for disposing of infractions; and
- (3) Allow magistrates to dispose of all Level I misdemeanors according to plea agreements between the State and defendants.

The North Carolina Courts Commission shall make an interim report to the 1993 General Assembly, Regular Session 1994, no later than May 15, 1994, and shall make a final report to the 1995 Regular Session of the General Assembly no later than its convening.

Requested by: Senators Kincaid, Soles, Daniel, Plyler, Representatives Nesbitt, Diamont

**COURTS COMMISSION STUDY CONCURRENT JURISDICTION  
BETWEEN THE DISTRICT AND SUPERIOR COURTS FOR  
DISPOSITION OF CERTAIN FELONIES**

**Sec. 52.** The North Carolina Courts Commission shall study whether to provide concurrent jurisdiction between the district and superior courts for the disposition of certain felonies.

The North Carolina Courts Commission shall make an interim report to the 1993 General Assembly, Regular Session 1994, no later than May 15, 1994, and shall make a final report to the 1995 Regular Session of the General Assembly no later than its convening.

Requested by: Representatives Ellis, Nesbitt, Diamont, Senators Daniel, Plyler, Odom, Ballance

**LRC STUDY PLACEMENT OF FELONS 16 YEARS OF AGE OR OLDER  
IN PRIVATE CORRECTIONAL FACILITIES**

**Sec. 53.** The Legislative Research Commission may study whether felons 16 years of age or older who are sentenced to State prison may be housed in private correctional facilities that equal or exceed the standards for adult correctional institutions of the American Correctional Association for construction and habitation. The report shall be made to the 1993 General Assembly, Regular Session 1994.

**PART 16. TECHNICAL CHANGES**

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**CORRECT OMISSION IN CHAPTER 561**

**Sec. 54.** Chapter 561 of the 1993 Session Laws is amended by adding the following new section to read:

**"MOST TEXT APPLIES ONLY TO 1993-95 BIENNIUM**

**Sec. 23.1.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the

textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Requested by: Senators Plyler, Daniel, Representatives Nesbitt, Diamont  
**EXTEND REPORTING DATE OF BUDGET PRACTICES STUDY COMMISSION**

Sec. 55. Sec. 22(f) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(f) The Budget Practices Study Commission shall report its findings and recommendations to the ~~1993 General Assembly, 1994 Regular Session, 1995 General Assembly upon its convening.~~"

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**LEGISLATIVE STUDY COMMISSION ON COMMUNITY COLLEGE CAPITAL NEEDS REPORT EXTENSION**

Sec. 56. (a) The second paragraph of Section 6(b)II. of Chapter 542 of the 1993 Session Laws reads as rewritten:

"It is the intent of the General Assembly to appropriate the proceeds of the bonds and notes in 1994 or at a subsequent session based on consideration of the recommendations of the Legislative Study Commission on Community College Capital Needs ~~in its report~~ to be submitted to the General Assembly ~~by April 1994~~ as provided in Section 11 of this act. Actual appropriations by the General Assembly in 1994 or at a subsequent session may be made without regard to the expressed intentions set forth above."

(b) Section 11(7) of Chapter 542 of the 1993 Session Laws reads as rewritten:

"(7) The Commission ~~shall make a final report to the General Assembly by April 1, 1994.~~ may make an interim report to the 1994 Regular Session of the 1993 General Assembly and shall make a final report to the General Assembly not later than its convening in 1995. Any appropriations recommended by the Commission in an interim report shall be the final recommendations with respect to those appropriations."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**LEGISLATIVE STUDY COMMISSION ON ECONOMIC INCENTIVES TO LURE INDUSTRY REPORTING EXTENSION**

Sec. 57. Section 103 (d) of Chapter 561 of the 1993 Session Laws reads as rewritten:

"(d) The Commission ~~shall~~ may submit a report to the 1993 General Assembly, Regular Session 1994 and shall submit a final report of its findings and recommendations to the 1995 General Assembly on or before April 15, 1994, its convening, by filing the report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**FISCAL TRENDS AND REFORM COMMITTEE REPORTING  
 EXTENSION**

**Sec. 58.** Section 169 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 169. The Legislative Research Commission may study, ~~and the Fiscal Trends Study Commission shall study,~~ all appropriations from the Highway Fund to agencies other than the Department of Transportation, including the Highway Patrol, Department of Correction, and Department of Public Instruction, and shall may report to the ~~General Assembly by the first day of the 1994 Regular Session~~ 1994 Regular Session of the 1993 General Assembly and the 1995 General Assembly on or before its convening on the appropriateness of these appropriations, the trends of these appropriations, on how the future growth in these appropriations can be limited, and on a policy on what type of programs can be funded from the Highway Fund."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**LEGISLATIVE RESEARCH COMMISSION (REFERRED DRIVER  
 EDUCATION PROGRAM TO JOINT LEGISLATIVE EDUCATION  
 OVERSIGHT COMMITTEE)**

**Sec. 59.** Section 144.3 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 144.3. The Legislative Research Commission shall study the driver education program offered by the public schools. The study shall consider:

- (1) The efficiency of the program and the impact on the efficiency of the program of the 1991 statutory changes allowing local boards of education to contract with public or private entities to provide driver education;
- (2) The impact on parents and students, especially in rural areas, of the State Board of Education rule requiring that driver education be offered outside of the regular instructional day; and
- (3) The overall cost of the program and the projected five-year cost of the program.

The Commission shall may make an interim report the results of its study by April 15, 1994, to the 1994 Regular Session of the 1993 General Assembly and a final report to the 1995 General Assembly upon its convening."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**LEGISLATIVE STUDY COMMISSION ON STATUS OF EDUCATION  
 AT THE UNIVERSITY OF NORTH CAROLINA**

**Sec. 60.** Section 101.5(g) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(g) The Commission shall make ~~an interim report~~ interim reports, as it deems appropriate, to the Joint Legislative Education Oversight Committee no later than April 15, 1994, and shall make a final report to the Joint Legislative Education Oversight Committee no later than February 15, 1995, March 1, 1995, at which time the Commission shall terminate."

**PART 17. CAPITAL IMPROVEMENT PROVISIONS**

Requested by: Senators Daniel, Plyler, Kaplan, Representatives Nesbitt, Diamont

**RESERVE FOR ADVANCE PLANNING**

**Sec. 61.** The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on how it intends to spend funds from the Reserve for Advance Planning at least 45 days before it spends the funds.

The Office of State Budget and Management shall also report the results of any project on which it uses funds from the Reserve for Advance Planning to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Requested by: Senators Daniel, Plyler, Kaplan, Representatives Nesbitt, Diamont

**ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUND**

**Sec. 62.** When each capital improvement project appropriated by the 1994 Extra Session of the General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

Requested by: Senators Daniel, Plyler, Kaplan, Representatives Nesbitt, Diamont

**PROJECT COST INCREASE**

**Sec. 63.** Upon the request of the administration of a State department or institution, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.



Requested by: Senators Daniel, Plyler, Kaplan, Representatives Nesbitt, Diamont

#### **NEW PROJECT AUTHORIZATION**

**Sec. 64.** Upon the request of the administration of any State department or institution, the Governor may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Provided, however, that if the Director of the Budget authorizes the construction of such a capital improvement project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Requested by: Senators Daniel, Plyler, Kaplan, Representatives Nesbitt, Diamont

#### **ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS**

**Sec. 65.** Funds which become available by gifts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State department or institution may be utilized for advance planning through the working-drawing phase of capital improvement projects, upon approval of the Director of the Budget. The Director of the Budget may make allocations from the Advance Planning Fund for advance planning through the working-drawing phase of capital improvement projects, except that this revolving fund may not be utilized by the Board of Governors of The University of North Carolina or the State Board of Community Colleges.

Requested by: Senators Daniel, Plyler, Kaplan, Representatives Nesbitt, Diamont

#### **APPROPRIATIONS LIMITS/REVERSION OR LAPSE**

**Sec. 66.** Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 1994 Extra Session of the General Assembly may be expended only for specific projects set out by the 1994 Extra Session of the General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 1994 Extra Session of the General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred no later than the end of the 1993-95 biennium. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

Requested by: Senators Daniel, Plyler, Gulley, Representatives Nesbitt, Diamont, Moore, Wilkins

**CONSTRUCTION FUND LIMITATIONS/RESERVE FOR  
CONSTRUCTION OF DETENTION CENTER/RELOCATE UMSTEAD  
PRISON BEDS**

**Sec. 67.** (a) With respect to funds appropriated in this act for construction of additional prison beds at Piedmont, Lumberton, Pender, Wayne, and Brown Creek, the Director of the Budget may increase or decrease the amount allocated to a particular institution within the aggregate amount of construction funds available, and the Secretary of Correction may, as appropriate and necessary, authorize construction of those beds at other facilities owned and operated by the Division of Prisons.

(b) The Office of State Construction of the Department of Administration may contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of facilities in order to implement the providing of facilities under the provisions of this act.

The facilities authorized under this act shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities. If the Secretary of Administration, after consultation with the Secretary of Correction, finds that the delivery of facilities must be expedited for good cause, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules implementing those statutes, to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Prior to exercising the exemptions allowable under this section, the Secretary of Administration shall give reasonable notice in writing of the Department's intent to exercise the exemptions to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairs of the House and Senate Appropriations Committees, the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division. The written notice shall contain at least the following information: (i) the specific statutory requirement or requirements from which the Department intends to exempt itself; (ii) the reason the exemption is necessary to expedite delivery of facilities; (iii) the way in which the Department anticipates the exemption will expedite the delivery of facilities; and (iv) a brief summary of the proposed contract for the project which is to be exempted.

The Office of State Construction of the Department of Administration shall have a verifiable ten percent (10%) goal for participation by minority- and women-owned businesses. All contracts for the design, construction, or demolition of facilities shall include a penalty for failure to complete the work by a specified date.

The Office of State Construction of the Department of Administration shall involve the Department of Correction in all aspects of the projects to the extent that such involvement relates to the Department's program needs and to its responsibility for the care of the prison population.

(c) The Office of State Construction of the Department of Administration shall provide quarterly reports to the Chairs of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairs of the Appropriations Committee in the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to any changes in projects and allocations made under this act. The report shall include any changes in the projects and allocations made pursuant to this act, information on which contractors have been selected, what contracts have been entered into, the projected and actual occupancy dates of facilities contracted for, the number of beds to be constructed on each project, the location of each project, and the projected and actual cost of each project.

The Department of Insurance and the Department of Correction shall report quarterly to the Joint Legislative Commission on Governmental Operations on their involvement in the construction program.

(d) The two 50-bed dormitories authorized for construction at Umstead Correctional Center pursuant to Section 3 of Chapter 550 of the 1993 Session Laws shall not be constructed at Umstead Correctional Center. The Secretary of Correction shall authorize the construction of those beds at other facilities owned and operated by the Division of Prisons.

(e) Of the funds appropriated to the Department of Human Resources in this act, the sum of one million six hundred thousand dollars (\$1,600,000) for the 1994-95 fiscal year shall be held in a reserve for the construction of one detention center, to be available for allocation as prescribed by the 1993 General Assembly, Regular Session 1994. The Joint House and Senate Human Resources Appropriations Subcommittees shall receive and review the findings and recommendations of the Juvenile Secure Custody Study authorized in Section 87 of Chapter 561 of the 1993 Session Laws to determine if these reserved funds need to be expended for the construction.

## **PART 18. MISCELLANEOUS PROVISIONS**

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**EFFECT OF HEADINGS**

**Sec. 68.** The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**EXECUTIVE BUDGET ACT REFERENCE**

**Sec. 69.** The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**MOST TEXT APPLIES ONLY TO 1993-95 BIENNIUM**

**Sec. 70.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the

textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**SEVERABILITY CLAUSE**

**Sec. 71.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**1993-94 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY**

**Sec. 72.** Except where expressly repealed or amended by this act, the provisions of Chapters 321 and 561 of the 1993 Session Laws remain in effect. Section 9 of Chapter 321 of the 1993 Session Laws does not apply to this act.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**EFFECTIVE DATE**

**Sec. 73.** Except as otherwise provided, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

H.B. 171

## CHAPTER 25

**AN ACT TO REQUIRE NOTIFICATION OF PAROLE HEARINGS AND THE DECISION REACHED AT THOSE HEARINGS TO NEWSPAPERS AND OTHER MEDIA IN THE COUNTY WHERE THE PRISONER BEING CONSIDERED FOR PAROLE WAS CONVICTED AND, IF DIFFERENT, IN THE COUNTY WHERE THE PRISONER WAS CHARGED.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15A-1371(b)(3) reads as rewritten:

"(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

- a. The prisoner;
- b. The district attorney of the district where the prisoner was convicted;
- c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;
- d. Any of the victim's immediate family members who have requested in writing to be notified; ~~and~~

- e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be ~~notified~~, notified; and
- f. As many newspapers of general circulation and other media in the county where the prisoner was convicted and if different, in the county where the prisoner was charged, as reasonable.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, ~~or~~ any member of the victim's immediate family who has requested to be notified, and as many newspapers of general circulation and other media in the county or counties designated in sub-subdivision f. of this section as reasonable, written notice of its decision within 10 days of that decision. The Parole Commission shall not, however, include the name of any victim in its notification to the newspapers and other media."

Sec. 2. G.S. 15A-1371(b)(3), as it will be effective upon the effective date of Section 22 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

- "(3) Whenever the Post-Release Supervision and Parole Commission will be considering for parole a prisoner serving a sentence of life imprisonment the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:
  - a. The prisoner;
  - b. The district attorney of the district where the prisoner was convicted;
  - c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;
  - d. Any of the victim's immediate family members who have requested in writing to be ~~notified~~, notified; and
  - e. Repealed by Session Laws 1993, c. 538, s. 22, effective January 1, 1995.
  - f. As many newspapers of general circulation and other media in the county where the defendant was convicted and if different, in the county where the prisoner was charged, as reasonable.

The Post-Release Supervision and Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, ~~or~~ any member of the victim's immediate family who has requested to be notified, and as many newspapers of general circulation and other media in the county or counties designated in sub-subdivision f. of this section as reasonable, written notice of its decision within 10 days



of that decision. The Parole Commission shall not, however, include the name of any victim in its notification to the newspapers and other media."

**Sec. 3.** Section 1 of this act becomes effective 45 days after ratification and expires upon the effective date of Section 22 of Chapter 538 of the 1993 Session Laws, but remains effective for offenses committed prior to the effective date of Section 22 of Chapter 538 of the 1993 Session Laws, as provided by Section 56 of that act. Section 2 of this act becomes effective at the same time that Section 22 of Chapter 538 of the 1993 Session Laws becomes effective. This section is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

S.B. 89

## CHAPTER 26

AN ACT TO REQUIRE THAT THE PARENT, GUARDIAN, OR NEXT-OF-KIN OF A MINOR WHO IS CHARGED BY A LAW ENFORCEMENT OFFICER SHALL BE NOTIFIED IMMEDIATELY OF THE CHARGE BY THE LAW ENFORCEMENT OFFICER MAKING THE CHARGE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15A-505 reads as rewritten:

"§ 15A-505. *Notification of minor's parent.*

(a) A law-enforcement officer who charges a minor with a criminal offense ~~must, without unnecessary delay, make a reasonable effort to inform or cause to be informed a parent or guardian of the minor of the charge,~~ shall notify the minor's parent or guardian of the charge, as soon as practicable, in person or by telephone. If the minor is taken into custody, the law enforcement officer or the officer's immediate superior shall notify a parent or guardian in writing that the minor is in custody within 24 hours of the minor's arrest. If the parent or guardian of the minor cannot be found, then the officer or the officer's immediate superior shall notify the minor's next-of-kin of the minor's arrest as soon as practicable.

~~(b) This notice is not required if:~~ The notification provided for by subsection (a) of this section shall not be required if:

- (1) The minor is ~~emancipated;~~ or emancipated;
- (2) The minor is not taken into custody and has been charged with a motor vehicle moving violation for which three or fewer points are assessed under G.S. 20-16(c), except an offense involving impaired driving, as defined in G.S. 20-4.01(24a); or
- (3) The minor has been charged with a motor vehicle offense that is not a moving violation."

**Sec. 2.** This act becomes effective May 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

AN ACT TO INCREASE THE TIME WITHIN WHICH HEARINGS FOR JUVENILES IN CUSTODY TAKE PLACE, TO PROVIDE FOR WAIVER OF HEARINGS ON CONTINUED CUSTODY, TO LENGTHEN TIME OF TEMPORARY CUSTODY OF JUVENILES WITHOUT AN ORDER, AND TO ALLOW PLACEMENT OF JUVENILES BY THE DEPARTMENT OF SOCIAL SERVICES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 7A-577 reads as rewritten:

"§ 7A-577. *Hearing to determine need for continued secure or nonsecure custody.*

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the five-calendar day period; applicable time period set forth in this subsection; Provided, that if such session does not precede the expiration of the five-calendar period, time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of his the right to have an attorney represent him legal representation as provided in G.S. 7A-584 if he the juvenile appears without counsel at the hearing.

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and his the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining whether continued custody is warranted.

(e) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

- (1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce ~~him~~ the juvenile in court for subsequent proceedings; or
- (2) Release into the care of a responsible person or organization; or
- (3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or
- (4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and should continue in custody, ~~he~~ the judge shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(g) Pending a hearing on the merits, further hearings to determine the need for continued secure custody shall be held at intervals of no more than seven calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

- (1) In the case of a juvenile alleged to be delinquent, only with the consent of the juvenile, through counsel for the juvenile; and
- (2) In the case of a juvenile alleged to be abused, neglected, or dependent, only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile home promptly. A finding that reasonable efforts have not been made to prevent or eliminate the need for placement shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable."

Sec. 2. G.S. 7A-571 reads as rewritten:

"§ 7A-571. *Taking a juvenile into temporary custody.*

Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody under the following circumstances:

- (1) A juvenile may be taken into temporary custody by a law-enforcement officer without a court order if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).
- (2) A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a court counselor if there are reasonable grounds to believe that ~~he~~ the juvenile is an undisciplined juvenile.
- (3) A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a Department of Social Services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that ~~he~~ the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a Department of Social Services worker takes a juvenile into temporary custody under this subdivision, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.
- (4) A juvenile may be taken into custody without a court order by a law-enforcement officer, by a court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Division of Youth Services as designated by the Department of Human Resources if there are reasonable grounds to believe the juvenile is an absconder from any State training school or approved detention facility."

**Sec. 3.** G.S. 7A-572(a) reads as rewritten:

"(a) A person who takes a juvenile into custody without a court order under G.S. 7A-571(1), (2), or (3) shall proceed as follows:

- (1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of ~~his~~ the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;
- (2) Release the juvenile to ~~his~~ the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary.
- (3) If the juvenile is not released under subsection ~~(b)~~, (b) of this section, the person having temporary custody shall proceed as follows:
  - a. In the case of a juvenile alleged to be delinquent or undisciplined, ~~he~~ the person having temporary custody shall request a petition be drawn pursuant to G.S. 7A-561 or if the clerk's office is closed, the magistrate pursuant to G.S. 7A-562. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the judge or person

delegated authority pursuant to G.S. 7A-573 if other than the intake counselor for a determination of the need for continued custody.

- b. In the case of a juvenile alleged to be abused, neglected, or dependent, he the person having temporary custody shall communicate with the Director of the Department of Social Services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7A-573 for a determination of the need for continued custody.

- (4) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours ~~hours~~, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:

- a. A petition or motion for review has been filed by an intake counselor or the Director of the Department of Social Services, and
- b. An order for secure or nonsecure custody has been entered by a judge."

Sec. 4. This act becomes effective July 1, 1994, and applies to offenses committed, or causes of action arising, on or after that date.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

H.B. 145

## CHAPTER 28

### AN ACT TO AMEND THE LAW REGARDING THE CONCEALMENT OF MERCHANDISE IN MERCANTILE ESTABLISHMENTS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 14-72.1(c) reads as rewritten:

"(c) A merchant, or his the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is in a reasonable manner for a reasonable length of time, if in detaining or in causing the arrest of such person, the merchant, or his the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or his the merchant's agent or employee, is a minor 16 years of age or younger, minor under the age of 18 years, the merchant or his the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor."

Sec. 2. This act becomes effective January 1, 1995, and applies to offenses occurring on or after that date.



In the General Assembly read three times and ratified this the 26th day of March, 1994.

## RESOLUTIONS

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### EXTRA SESSION 1994

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H.J.R. 1

#### RESOLUTION 1

A JOINT RESOLUTION INFORMING HIS EXCELLENCY, GOVERNOR JAMES B. HUNT, JR., THAT THE EXTRA SESSION OF THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

*Be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** A committee of five Senators and five Representatives shall be appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, respectively, to notify His Excellency, Governor James B. Hunt, Jr., that the Extra Session of the General Assembly is organized and is ready to proceed with public business, and to invite him to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 12:00 noon, Tuesday, February 8, 1994.

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of February, 1994.

S.J.R. 179

#### RESOLUTION 2

A JOINT RESOLUTION ADJOURNING THE 1994 EXTRA SESSION SINE DIE.

*Be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The House of Representatives and the Senate, constituting the 1994 Extra Session of the General Assembly, do adjourn the 1994 Extra Session *sine die* on Saturday, March 26, 1994, at 12:15 a.m.

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

## ORIGINAL ARTICLES

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**SESSION LAWS**  
**OF THE**  
**STATE OF NORTH CAROLINA**

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**REGULAR SESSION 1994**

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S.B. 690

**CHAPTER 556**

**AN ACT AMENDING THE CHARTER OF DURHAM TO AUTHORIZE  
THE MAKING OF EMERGENCY REPAIRS IN HOUSING CODE  
CASES.**

*The General Assembly of North Carolina enacts:*

**Section 1.** The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, is amended by adding the following new section:

*"Sec. 102.3. Emergency repairs in housing code cases.*

(a) The City Council may, by ordinance, authorize a housing appeals board created pursuant to G.S. 160A-446 to adopt ordinances ordering the housing inspector to repair a condition or conditions of a dwelling or dwelling unit that pose(s) an immediate threat of danger or harm to the safety of the occupants in such dwelling or dwelling unit. Any ordinance adopted under this section shall provide that at least 72 hours notice will be given to the owner of and parties in interest in such dwelling or dwelling unit prior to the making of any repairs or improvements by the housing inspector.

(b) The amount of the cost of such repairs, alterations, or improvements shall be a lien against the real property upon which such cost was incurred, which lien shall be filed, have the same priority and shall be collected as provided by Article 10 of Chapter 160A of the General Statutes."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of May, 1994.

AN ACT TO PROVIDE FOR A DISABLED SPORTSMAN PROGRAM  
UNDER THE WILDLIFE RESOURCES COMMISSION AND TO  
ESTABLISH A NONRESIDENT BEAR HUNTING LICENSE.

*The General Assembly of North Carolina enacts:*

Section 1. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-296. Disabled Sportsman Program.

(a) The Disabled Sportsman Program is established, to be developed and administered by the Wildlife Resources Commission. The Disabled Sportsman Program shall consist of special hunting and fishing activities adapted to the needs of persons with the disabilities described in subsection (b) of this section.

(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, a person must be able to certify through competent medical evidence one of the following disabilities:

- (1) Amputation of one or more limbs;
- (2) Paralysis of one or more limbs;
- (3) Dysfunction of one or more limbs rendering the person unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) Disease, injury, or defect confining the person to a wheelchair, walker, or crutches;
- (5) Legal deafness; or
- (6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and a person loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist.

(c) A person who qualifies under subsection (b) of this section may apply for participation in the Disabled Sportsman Program by completing an application supplied by the Wildlife Resources Commission and by supplying the medical evidence necessary to confirm the person's disability. In order to participate in activities under the Program, each disabled participant may be accompanied by an able-bodied companion, who may also participate in the hunting, fishing, or other activity. The Commission shall charge each disabled participant an annual fee of ten dollars (\$10.00) to defray the cost of processing the application and administering the special activities provided under the Program. The participant and the participant's companion shall also obtain any applicable hunting, fishing, or other special license required for the activities.

(d) In developing the Disabled Sportsman Program, the Wildlife Resources Commission shall:

- (1) Establish special seasons and bag limits for hunting all or selected species of wildlife;
- (2) Authorize the manner for taking wildlife, consistent with State law;



- (3) Permit the use of vehicles and other means of conveyance in areas normally closed to such use;
- (4) Set special fishing seasons and size and creel limits for inland fish; and
- (5) Permit the use of crossbows or other specially equipped bows by persons incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow, but only during a season for hunting with bow and arrow and only during a special hunt organized and supervised by the Wildlife Resources Commission for the Disabled Sportsman Program; and
- (6) Alter any other established rules of the Wildlife Resources Commission pertaining to hunting, fishing, or special activities, as generally applicable or as applicable to game lands, for the purpose of providing access to disabled persons participating in the Disabled Sportsman Program.

The Wildlife Resources Commission may use its game lands for purposes of conducting special activities for the Disabled Sportsman Program, and may enter into agreements with other landholders for purposes of conducting special activities on private lands.

(c) The Wildlife Resources Commission may establish special activities under the Disabled Sportsman Program for any class or classes of disability described in subsection (b) of this section. The Commission shall publicize these activities through the public media and in the Commission's publications to ensure that disabled persons are notified of the activities and informed about the application process.

(f) The Wildlife Resources Commission shall hold at least four special hunting activities under the Disabled Sportsman Program per calendar year, at least two during the season for taking deer with bow and arrow, and at least two during the season for taking deer with guns. The Commission shall alternate the location of these special activities so as to provide equal access to disabled persons in all regions of the State."

Sec. 2. G.S. 113-270.3(b) is amended by adding a new subsection to read:

- "(1a) Nonresident Bear Hunting License -- \$100.00. This license is valid for use only by an individual within the State and must be procured before taking any bear within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear within the State without procuring this license; provided, that those persons who have a nonresident lifetime sportsman combination license purchased prior to July 1, 1993, shall not have to purchase this license."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of May, 1994.

The bill bearing Chapter number 558 was enrolled at the end of the 1993 Regular Session (See SESSION LAWS, 1993 REGULAR SESSION, VOL. 2, p. 2955).

AN ACT TO PROHIBIT THE ERECTION OF OUTDOOR ADVERTISING ON A PORTION OF U.S. HIGHWAY 52 AND NORTH CAROLINA HIGHWAY 752 IN SURRY COUNTY AND TO PROHIBIT THE ERECTION OF OUTDOOR ADVERTISING ON ANY INTERSTATE HIGHWAY IN BUNCOMBE COUNTY OUTSIDE THE LIMITS OF A MUNICIPALITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** No outdoor advertising, as defined in G.S. 136-128(3), that is visible and intended to be read from the right-of-way of the portion of North Carolina Highway 752 and United States Highway 52 south of the airport forming a corridor through the foothills of Surry County past Pilot Mountain State Park, shall be erected on or after the effective date of this act. No new or replacement outdoor advertising, as defined in G.S. 136-128(3), shall be erected within 660 feet of any interstate highway located in Buncombe County outside the corporate limits of a municipality.

**Sec. 2.** Section 1 of this act shall not apply to outdoor advertising described in G.S. 136-129(1), (2), or (3).

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of May, 1994.

AN ACT TO CHANGE THE TIME BY WHICH THE NORTH CAROLINA UTILITIES COMMISSION AND THE PUBLIC STAFF PROVIDE BIENNIAL NATURAL GAS SERVICE REPORTS TO THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 62-36A reads as rewritten:

"§ 62-36A. *Natural gas planning.*

(a) The Commission shall require each franchised natural gas local distribution company to file reports with the Commission detailing its plans for providing natural gas service in areas of its franchise territory in which natural gas service is not available. ~~Initial reports shall be filed at a time set by the Commission, but not later than January 1, 1990.~~ Commission rules shall require that each local distribution company shall update its report at least every two years.

(b) The Commission shall develop rules to carry out the intent of subsection (a) of this section, and to produce an orderly system for reviewing current levels of natural gas service and planning the orderly expansion of natural gas service to areas not served.

(c) Within ~~120~~ 180 days after all local distribution companies have filed their initial or biennial update reports, the Commission and the Public Staff shall independently provide analyses and summaries of those reports, together with status reports of natural gas service in the State, to the Joint Legislative Utility Review Committee."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1994.

S.B. 26

**CHAPTER 561**

The bill bearing Chapter number 561 was enrolled at the end of the 1993 Regular Session (See SESSION LAWS, 1993 REGULAR SESSION, VOL. 2, p. 2959).

S.B. 785

**CHAPTER 562**

AN ACT TO EXTEND THE SUNSET FOR THE METHOD OF SELECTING MEMBERS OF THE NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION APPOINTED BY THE NORTH CAROLINA SHERIFFS' ASSOCIATION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 3 of Chapter 1005 of the 1991 Session Laws reads as rewritten:

"Sec. 3. This act is effective upon ratification and expires September 1, ~~1993~~ 1994."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of May, 1994.

H.B. 439

**CHAPTER 563**

The bill bearing Chapter number 563 was enrolled at the end of the 1993 Regular Session (See SESSION LAWS, 1993 REGULAR SESSION, VOL. 2, p. 3051).

H.B. 233

**CHAPTER 564**

AN ACT TO REQUIRE LICENSURE OF MARRIAGE AND FAMILY THERAPISTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** This act shall be known and may be cited as the "Marriage and Family Therapy Licensure Act of 1993."

**Sec. 2.** Article 18C of Chapter 90 of the General Statutes reads as rewritten:

"ARTICLE 18C.

"~~Marital~~ Marriage and Family Therapy Certification Licensure Act.

"§ 90-270.45. *Title of Article.*

This Article shall be known as the '~~Marital~~ Marriage and Family Therapy Certification Licensure Act.'

"§ 90-270.46. *Policy and purpose.*

~~Marital Marriage~~ and family therapy in ~~the State of~~ North Carolina is declared to be a professional practice which that affects the public safety and welfare and requires appropriate certification licensure and control in the public interest.

It is the purpose of this Article to establish a certification licensure agency, a structure, and procedures ~~which that~~ will (i) ensure that the public has a means of protecting itself from the practice of marriage and family therapy by unprofessional, unauthorized, and unqualified individuals, and (ii) protect the public from unprofessional, improper, unauthorized and unqualified use of certain titles by persons who practice marital marriage and family therapy. This Article shall be liberally construed to carry out these policies and purposes.

"§ 90-270.47. *Definitions.*

As used in this Article, unless the context clearly requires a different meaning:

- (1) 'Allied mental health field' and 'degree' mean:
  - a. Master's or doctoral degree in clinical social work;
  - b. Master's or doctoral degree in psychiatric nursing;
  - c. ~~Doctoral~~ Master's or doctoral degree in counseling or clinical or counseling psychology;
  - d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or
  - e. Master's or doctoral degree in any mental health field ~~wherein~~ the course of study of which is equivalent to the master's degree in marital marriage and family therapy.
- (2) 'Board' means the North Carolina ~~Marital Marriage and Family Therapy Certification Licensure~~ Board.
- (3) '~~Certified marital~~ 'Licensed marriage and family therapist' means a person to whom a certificate license has been issued pursuant to ~~the provisions of this Article, which certificate if the license is in force and not suspended or revoked as of the particular time in question, revoked.~~
- (3a) 'Marriage and family therapy' is the clinical practice, within the context of marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and

emotional disorders. Marriage and family therapy includes referrals to and collaboration with other health care professionals when appropriate.

- (4) 'Practice of marital marriage and family therapy' means the rendering of professional marital marriage and family therapy or counseling services to individuals, family groups and marital pairs, couples, or families, singly or in groups, whether such the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise. 'Marital and family therapy' is a specialized field of therapy which centers largely upon the family system and the relationship between husband and wife. 'Marital and family therapy' consists of the application of principles, methods, educational and therapeutic techniques for the purpose of resolving emotional conflict, altering old attitudes and establishing new ones in the area of marriage and family life.
- (5) 'Recognized educational institution' means any educational institution which that grants a bachelor's, master's, or doctor's doctoral degree and which is recognized by the Board or and by a nationally or regionally recognized educational or professional accrediting body.

*"§ 90-270.48. Prohibited acts.*

Except as specifically provided elsewhere in this Article, commencing January 1, 1980, no person who is not certified under this Article shall use a title or description such as 'certified marital or marriage therapist, counselor, advisor or consultant,' 'certified marital or marriage and family therapist, counselor, advisor or consultant,' or any other name, style or description denoting that the person is a certified marital and family therapist. Nothing herein shall prohibit any person from advertising the performance of marital and family therapy or counseling services, the persons from whom it may be obtained and prices. it is unlawful for a person not licensed as a marriage and family therapist under this Article to practice marriage or family therapy or hold himself or herself out to the public as a person practicing marriage and family therapy.

*"§ 90-270.48A. Exemptions.*

(a) This Article does not prevent members of the clergy or licensed, certified, or registered members of professional groups recognized by the Board from advertising or performing services consistent with their own profession. Members of the clergy include, but are not limited to, persons who are ordained, consecrated, commissioned, or endorsed by a recognized denomination, church, faith group, or synagogue. Professional groups the Board shall recognize include, but are not limited to, certified social workers, licensed professional counselors, fee-based pastoral counselors, licensed practicing psychologists, psychological associates, physicians, and attorneys-at-law. However, in no event may a person use the title 'Licensed Marriage and Family Therapist,' use the letters 'LMFT,' or in any way imply that the person is a licensed marriage and family therapist unless the person is licensed as such under this Article.



(b) A person is exempt from the requirements of this Article if any of the following conditions are met:

- (1) The person is (i) preparing for the practice of marriage and family therapy in a manner prescribed by rules of the Board, (ii) under qualified supervision in a training institution or facility or supervisory arrangement recognized and approved by the Board, and (iii) designated by a title such as 'marriage and family therapy intern,' or 'marriage and family therapy supervisee,' or another similar title approved by the Board.
- (2) The person is practicing marriage and family therapy as an employee of a recognized educational institution, or a governmental institution or agency and the practice is included in the duties for which the person was employed by the institution or agency.
- (3) The person is practicing marriage and family therapy as an employee of a nonprofit organization which the Board has determined meets community needs and the practice is included in the duties for which the person was employed by the nonprofit organization.
- (4) The person is practicing marriage and family therapy as an employee of a hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes. Provided, however, no such person shall hold himself out as a licensed marriage and family therapist.

"§ 90-270.48B. *Third-party reimbursement.*

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"§ 90-270.49. *North Carolina Marital Marriage and Family Therapy Certification Licensure Board.*

(a) Establishment. -- There is hereby established as an agency of the State of North Carolina the North Carolina Marital Marriage and Family Therapy Certification Licensure Board, which shall be composed of seven Board members, one of which shall be designated as chairperson, members to be appointed in the manner as provided for in G.S. 90-270.50. ~~Of the first Board members appointed, three shall continue in office for two years, two for three years, and two, including the chairperson for four years, respectively. Their successors~~ Board members shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Board member whom he shall succeed. Upon the expiration of his a Board member's term of office, a the Board member shall continue to serve until his successor shall have been appointed and shall have a successor has qualified. No person may be appointed more than once to fill an unexpired term or for more than two consecutive full terms. The Governor shall designate one Board member to serve as chairperson during the term of his appointment to the Board. No person may serve as chairperson for more than four years.

The Governor may remove any member of from the Board or remove the chairperson from his the position as of chairperson only for neglect of duty

~~or malfeasance or duty, malfeasance, or conviction of a felony or crime of moral turpitude while in office but for no other reason, office.~~

No Board member shall participate in any matter before the Board in which ~~he~~ the member has a pecuniary interest, personal bias, or other similar conflict of interest.

(b) Quorum and Principal Office. -- Four of the members of the Board shall constitute a quorum of the Board. The Board shall specify the principal office of the Board shall be at such location in the State of North Carolina as the Board shall from time to time specify. Board within this State.

~~(c) Board Employees. -- The Board is authorized to employ, subject to the provisions of Chapter 126 of the General Statutes, such attorneys, experts, and other employees as it may from time to time find necessary for the proper performance of its duties and for whom the necessary funds are appropriated.~~

"§ 90-270.50. Appointment and qualification of Board members.

(a) Nominations for Appointment. -- The Governor shall appoint members of the Board only from among the candidates who meet the following qualifications:

(1) Four members shall be practicing marital marriage and family therapists who ~~meet the educational and experience requirements stated in this Article for persons applying after January 1, 1981;~~ are licensed marriage and family therapists in the State at the time of their appointment, and each shall have been each of whom has been for at least five years immediately preceding appointment actively engaged as a marital marriage and family therapist in rendering professional services in marital marriage and family therapy, or in the education and training of doctoral or postdoctoral graduate or postgraduate students of marital marriage and family therapy, and shall have has spent the majority of the time devoted by him to such this activity in this State during the two years preceding his appointment, in this State. appointment. The initial appointees, appointed pursuant to this section, shall be deemed to be and shall become certified practicing marital and family therapists immediately upon their appointment and qualification as members of the Board.

(2) Three members shall be representatives of the general public who have no direct affiliation with the practice of marital marriage and family therapy.

(b) The appointment of any member of the Board shall automatically terminate 30 days after the date ~~such~~ the member is no longer a resident of the State of North Carolina.

~~(c) If before the expiration of his term any member shall die, resign, become disqualified, or otherwise cease to be a Board member, the vacancy shall be filled by the~~ The Governor shall fill any vacancy by appointment for the unexpired term.

(d) Each member of the Board must be a citizen of this State and must reside in a different congressional district in this State.

~~"§ 90-270.51. Board meetings. Powers and duties.~~

(a) The Board shall administer and enforce ~~the provisions of this Article.~~

(b) ~~The Board may adopt rules to implement this Article.~~ Subject to the provisions of Chapter 150B of the General Statutes, the Board may adopt, amend, or repeal rules to administer and enforce this Article, including rules of professional ethics for the practice of marriage and family therapy.

(c) The Board shall examine and pass on the qualifications of all applicants for ~~certificates licensure~~ under this Article, and shall issue a certificate license to each successful ~~applicant therefor.~~ applicant.

(d) The Board may adopt a seal which may be affixed to all ~~certificates~~ licenses issued by the Board.

(e) The Board may authorize expenditures ~~deemed necessary~~ to carry out the provisions of this Article from the fees ~~which that~~ it collects, but ~~in no event shall~~ expenditures may not exceed the revenues of the Board during any fiscal year.

(f) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, attorneys, experts, and other employees as necessary to perform its duties.

*"§ 90-270.52. Certification License application.*

(a) Each person desiring to obtain a certificate license under this Article shall ~~make application thereof~~ apply to the Board upon ~~such~~ the form and in ~~such the manner as the Board shall prescribe and prescribed by the Board.~~ Each applicant shall furnish evidence satisfactory to the Board that ~~he;~~ the applicant:

- (1) Is of good moral character;
- (2) Has not engaged or is not engaged in any practice or conduct ~~which that~~ would be a ground for denial, ~~revocation~~ revocation, or suspension of a certificate license under G.S. 90-270.60;
- (3) Is qualified for certification licensure pursuant to the requirements of this Article.

(b) A license obtained through fraud or by any false representation is void.

*"§ 90-270.53. Application for certificate without examination before July 1, 1982.*

Any person who applies on or before July 1, 1982, shall be issued a certificate by the Board if he meets the qualifications set forth in subdivisions (1), (2), and (3) of G.S. 90-270.52 and provides satisfactory evidence to the Board that he either:

- (1) Meets educational and experience qualifications as follows:
  - a. Educational requirements: Possesses a minimum of a master's degree or the equivalent from a recognized educational institution in the field of marriage or family therapy or a degree in an allied mental health field or shall be a clergyman or a physician whose official transcripts establish that he has completed an appropriate course of study in an allied mental health field. In addition, an applicant meets the educational requirements by presenting satisfactory evidence of post-master's or post-doctoral training taken in the field of marital and family therapy or counseling from an educational or training institution or program recognized by the Board

~~notwithstanding the fact that such training was taken at a nondegree granting institution or in a nondegree program, provided that such training, by itself or in combination with any training received as part of the program leading to a degree from a recognized educational institution, is the equivalent in content and quality, as defined in the duly adopted rules and regulations of the Board, of a master's or doctoral degree in marital and family therapy and counseling.~~

- b. ~~Experience requirements: At least 3,000 hours of clinical experience in the practice of marital and family therapy, not more than 500 hours of which experience was obtained while the candidate was a student in a master's degree program and at least 2,500 of which experience was obtained subsequent to the granting of such degree in the field of marital and family therapy or an allied mental health field; or~~

- (2) ~~Was certified prior to July 1, 1982, in this State in an allied mental health profession and satisfies the educational requirements for certification as a certified marital and family therapist set forth in (1)a., of this section.~~

"§ 90-270.54. *Application for certificate by examination. Requirements for license.*

(a) ~~Any person who applies to the Board after January 1, 1981, Each applicant shall be issued a certificate license by the Board if he the applicant meets the qualifications set forth in subdivisions (1), (2), and (3) of G.S. 90-270.52 G.S. 90-270.52(a) and provides satisfactory evidence to the Board that he; the applicant:~~

- (1) ~~Meets educational and experience qualifications as follows:~~

- a. ~~Educational requirements: Possesses a minimum of a master's degree or the equivalent from a recognized educational institution in the field of marital marriage and family therapy or counseling, therapy, or a degree in an allied mental health field, which degree is evidenced by the applicant's official transcripts which establish that he the applicant has completed an appropriate course of study in an allied mental health field. In addition, an applicant meets~~ An applicant with a degree in an allied mental health field may meet the educational requirements by presenting if the applicant presents satisfactory evidence of post-master's or post-doctoral training taken in the field of marital marriage and family therapy or counseling from an educational or training institution or a program recognized by the Board notwithstanding the fact that such regardless whether the training was taken at a nondegree granting institution or in a nondegree program, provided that such as long as the training, by itself or in combination with any training received as part of the program leading to a degree from a recognized educational institution, other training, is the equivalent in content and quality, as defined in the duly adopted rules and regulations of the Board, of a



master's or doctoral degree in marital marriage and family therapy and counseling therapy;

- b. Experience requirements: ~~At~~ Has at least 1,500 hours of clinical experience in the practice of marital marriage and family therapy, not more than 500 hours of which ~~experience was were~~ obtained while the candidate was a student in a master's degree program and at least 1,000 of which ~~experience was were~~ obtained subsequent to the granting of such after the applicant was granted a degree in the field of marital marriage and family therapy or an allied mental health field (with ongoing supervision consistent with standards approved by the Board); and

- (2) Passes ~~a written and/or oral~~ an examination administered by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58.

"§ 90-270.55. ~~Examination.~~ Examinations.

(a) The Board shall conduct an examination at least once a year at a time and place designated by the Board. ~~(b) Examinations may be written or oral written, oral, or both as determined by the Board. (c) Examinations shall include questions in such theoretical and applied fields to test an applicant's knowledge and competence to engage in the practice of marital marriage and family therapy. (d) An applicant shall be held to have passed an examination upon affirmative vote of a majority of the members of the Board present and voting. The Board shall set the passing score for examinations. (e) Any person who fails an examination conducted by the Board shall not be admitted to a subsequent examination for a period of at least six months.~~

"§ 90-270.55A. Temporary license.

The Board shall issue a nonrenewable temporary license to a person applying for licensure under G.S. 90-270.54 for a period not to exceed the lesser of one year or the date next scheduled for issuance of new licenses pursuant to G.S. 90-270.54 upon a finding that the person substantially meets the education and experience requirements of G.S. 90-270.54(a)(1). No temporary license shall be issued to a person who has failed an examination administered under G.S. 90-270.55. Recipients of temporary licenses have all the rights, duties, and obligations of permanent licensees, except that the Board shall limit by rule the practice of marriage and family therapy by temporary licensees.

"§ 90-270.56. ~~Reciprocal certificates.~~ licenses.

The Board shall issue a certificate license by reciprocity to any person who applies for the license as prescribed by the Board and who is licensed or certified as a marital marriage and family therapist in another state whose requirements for the license or certificate are equivalent to or exceed the requirements of this State, ~~provided the applicant submits an application on~~



forms prescribed by the Board and pays the original certification fee prescribed by this Article. State.

"§ 90-270.57. Fees.

The Board shall charge each applicant for certification an application fee not to exceed seventy-five dollars (\$75.00). This fee shall be payable to the Board by the applicant at the time of filing application. In no case shall the application fee be refunded, unless in the discretion of the Board the applicant shall be deemed ineligible for examination. In addition, the Board may charge an examination fee not to exceed fifty dollars (\$50.00) to each applicant to whom an examination is administered.

In order to fund the Board's activities under this Article, the Board may charge and collect fees not exceeding the following:

<u>(1) Each license examination</u>	<u>\$50.00</u>
<u>(2) Each license application</u>	<u>150.00</u>
<u>(3) Each renewal of license</u>	<u>100.00</u>
<u>(4) Each reciprocal license application</u>	<u>150.00</u>
<u>(5) Each reinstatement of an expired license</u>	<u>125.00</u>
<u>(6) Each application to return to active status</u>	<u>125.00.</u>

In addition to the examination fee provided in subdivision (1) of this section, the Board may charge and collect from each applicant for license examination the cost of test materials.

The Board is authorized to return all or a portion of fees paid in cases where the applicant is ineligible or in cases of undue hardship.

"§ 90-270.58. Renewal of certificate- license.

The Board shall require the renewal of all certificates of qualification annually on the first day of July, and shall charge and collect a fee not to exceed fifty dollars (\$50.00) for such renewal.

All licenses issued under this Article shall expire automatically on the first day of July of each year. The Board shall renew a license upon (i) completion of the continuing education requirements of G.S. 90-270.58B and (ii) payment of the renewal fee.

"§ 90-270.58A. Reinstatement after expiration.

A person whose license has expired may have the license reinstated as prescribed by the Board. The Board shall charge and collect a fee for reinstatement of the license.

"§ 90-270.58B. Inactive status.

(a) A person who holds a valid and unexpired license and who is not actively engaged in the practice of marriage and family therapy may apply to the Board to be placed on inactive status. A person on inactive status shall not be required to pay annual renewal fees.

(b) A person on inactive status shall not practice or hold himself out as practicing marriage and family therapy or perform any other activities prohibited by this Article.

(c) A person desiring to return to active status shall submit written application to the Board. The Board shall return the person to active status upon payment of the fee specified in G.S. 90-270.57 and upon such showing of competency to resume practice as the Board may require.

"§ 90-270.58C. Continuing education requirements.

The Board shall prescribe continuing education requirements for licensees. These requirements shall be designed to maintain and improve the quality of professional services in marriage and family therapy provided to the public, to keep the licensee knowledgeable of current research, techniques, and practice, and to provide other resources that will improve skill and competence in marriage and family therapy. The number of hours of continuing education shall not exceed the number of hours available that year in Board-approved courses within the State. The Board may waive these continuing education requirements for not more than 12 months, but only upon the licensee's satisfactory showing to the Board of undue hardship.

"§ 90-270.59. *Disposition of funds.*

All fees and other moneys collected and received by the Board shall be used for the purpose of implementing to implement this Article.

"§ 90-270.60. *Denial, ~~revocation~~ revocation, or suspension of ~~certification~~ license.*

(a) Grounds for Denial, Revocation, or Suspension. -- The Board is authorized to deny, revoke may deny, revoke, or suspend a certificate license granted pursuant to this Article on any of the following grounds:

- (1) Conviction of a felony under the laws of the United States or of any state of the United States; States.
- (2) Conviction of any crime, an essential element of which is dishonesty, deceit, or ~~fraud~~; fraud.
- (3) Fraud or deceit in obtaining a ~~certificate~~ license as a ~~certified marital marriage~~ and family therapist; therapist.
- (4) Dishonesty, fraud or gross negligence in the practice of ~~marital marriage~~ and family therapy; therapy.
- (5) Violation of any rule of professional ethics and professional conduct adopted by the Board.

(b) Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes.

"§ 90-270.61. *Penalties.*

Any person not ~~certified~~ licensed as a ~~marital marriage~~ and family therapist under this Article, who on or after January 1, 1980, Article who engages in the practice of marriage and family therapy, or holds himself or herself out to be or advertises that he is a ~~certified marital and family therapist~~ in violation of this Article has committed an infraction, which is punishable by a fine of not more than one hundred dollars (\$100.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine, a marriage or family therapist or engaged in marriage and family therapy in violation of this Article is guilty of a Class 2 misdemeanor.

"§ 90-270.62. *Injunction.*

As an additional remedy, the Board may proceed in a superior court to enjoin and restrain any ~~uncertified~~ person without a valid license from violating the prohibitions of this Article. The Board shall not be required to post bond to such proceeding."

**Sec. 3.** All members of the North Carolina Marital and Family Therapy Certification Board shall continue to be members of the North Carolina Marriage and Family Therapy Licensure Board until the expiration of their terms as members of the North Carolina Marital and Family Therapy Certification Board.

**Sec. 4.** (a) The North Carolina Marriage and Family Therapy Licensure Board shall be considered a continuation of the North Carolina Marital and Family Therapy Certification Board for the purpose of succession to all rights, powers, duties, and obligations of the North Carolina Marital and Family Therapy Certification Board.

(b) No action or proceeding involving the North Carolina Marital and Family Therapy Certification Board that is pending on the effective date of this act shall be affected by this act. No cause of action arising under this Article before the effective date of this act is affected by this act.

(c) All rules, regulations, acts, determinations, and decisions of the North Carolina Marital and Family Therapy Certification Board in force on the effective date of this act shall continue in force as rules, regulations, acts, determinations, and decisions of the North Carolina Marriage and Family Therapy Licensure Board until modified or repealed by the North Carolina Marriage and Family Therapy Licensure Board.

**Sec. 5.** This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 13th day of June, 1994.

H.B. 1133

## CHAPTER 565

### AN ACT TO PERMIT MEN WHO ARE DIVORCED OR WIDOWED TO RESUME USE OF THE SURNAME THEY USED BEFORE MARRIAGE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 50-12 reads as rewritten:

"§ 50-12. ~~Resumption of maiden name or adoption of name of prior deceased or prior divorced husband.~~ maiden or premarriage surname.

(a) Any woman whose marriage is dissolved by a decree of absolute divorce may, upon application to the clerk of court of the county in which she resides setting forth her intention to do so, change her name to any of the following:

- (1) Her maiden name; or
- (2) The surname of a prior deceased husband; or
- (3) The surname of a prior living husband if she has children who have that husband's surname.

(a1) A man whose marriage is dissolved by decree of absolute divorce may, upon application to the clerk of court of the county in which he resides setting forth his intention to do so, change the surname he took upon marriage to his premarriage surname.

(b) The application shall be addressed to the clerk of the court of the county in which such divorced ~~woman~~ person resides, and shall set forth the full name of the former ~~husband~~ spouse of the applicant, the name of the

county and state in which the divorce was granted, and the term or session of court at which such divorce was granted, and shall be signed by the applicant woman in her full maiden ~~name~~, name, or by the man in his full premarriage surname. The clerks of court of the several counties of the State shall record and index such applications in such manner as shall be required by the Administrative Office of the Courts.

(c) If ~~a woman~~, an applicant, since ~~her~~ the divorce, has adopted one of the surnames listed in ~~subsection (a)~~ subsection (a) or (a1) of this section, ~~her~~ the applicant's use and adoption of that name is validated.

(d) In the complaint, or counterclaim for divorce filed by any woman person in this State, ~~she~~ the person may petition the court to adopt any surname as provided by this section, and the court is authorized to incorporate in the divorce decree an order authorizing ~~her~~ the person to adopt that surname."

Sec. 2. G.S. 101-8 reads as rewritten:

"§ 101-8. *Resumption of name by ~~widow~~, widow or widower.*

A ~~woman~~ person at any time after ~~she~~ the person is widowed, may ~~resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband upon application to the clerk of superior court of the county in which she resides, setting forth her intention to do so.~~ widowed may, upon application to the clerk of court of the county in which the person resides setting forth the person's intention to do so, resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband in the case of a widow, or his premarriage surname in the case of a widower. The application shall set forth the full name of the last ~~husband~~ spouse of the applicant, shall include a copy of ~~his~~ the spouse's death certificate, and shall be signed by the applicant in ~~her~~ the applicant's full name. The clerks of court of the several counties of this State shall record and index such applications in the manner required by the Administrative Office of the Courts."

Sec. 3. This act becomes effective October 1, 1994.

In the General Assembly read three times and ratified this the 15th day of June, 1994.

S.B. 719

## CHAPTER 566

### AN ACT TO AMEND THE FEES AND PER DIEM OF THE BOARD OF MEDICAL EXAMINERS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 90-15.1 reads as rewritten:

"§ 90-15.1. *Registration every two years with Board.*

Every person ~~heretofore or hereafter~~ licensed to practice medicine by ~~said~~ the Board of Medical Examiners shall, during the month of ~~January, 1958,~~ and during the month of January in every even-numbered year thereafter, odd-numbered year, register with the secretary-treasurer of said Board Board. A person who registers with the Board shall report to the Board the person's ~~his~~ name and office and residence address and ~~such~~ any other information ~~as the Board may deem necessary and required by the Board,~~



and shall pay a registration fee fixed by the Board not in excess of ~~one two~~ hundred dollars ~~(\$100.00)~~. ~~In the event a~~ (\$200.00). A physician who fails to register ~~as herein provided he when required~~ shall pay an additional ~~amount~~ fee of twenty dollars (\$20.00) to the Board. Should a physician fail to register and pay the fees imposed, and should such failure continue for a period of 30 days, the license of such physician may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. Upon payment of all fees and penalties which are due, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements."

Sec. 2. G.S. 90-15 reads as rewritten:

"§ 90-15. *License fee; salaries, fees, and expenses of Board.*

Each applicant for a license by examination shall pay to the ~~treasurer of~~ the Board of Medical Examiners of the State of North Carolina a fee which shall be prescribed by ~~said the~~ Board in an amount not exceeding the sum of four hundred dollars (\$400.00) plus the cost of test materials before being admitted to the examination. Whenever ~~any a~~ license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to ~~the treasurer of~~ the Board a fee in an amount to be prescribed by the Board not in excess of two hundred fifty dollars (\$250.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to ~~the treasurer of~~ the Board a fee not to exceed one hundred fifty dollars (\$150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of twenty-five dollars (\$25.00). A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the ~~treasurer of the~~ Board of Medical Examiners of the State of North Carolina, to be held ~~by him as~~ in a fund for the use of ~~said the~~ Board. The compensation and expenses of the members and officers of the ~~said the~~ Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of ~~said the~~ fund, upon the warrant of the ~~said Board and all expenses proper and necessary in the opinion of the officers and members of said Board shall be fixed by the Board but~~ Board. The per diem compensation of Board members shall not exceed ~~one two~~ hundred dollars (\$100.00) (\$200.00) per day per member for time spent in the performance and discharge of his duties as a ~~member of said Board, and reimbursement for travel and other necessary expenses incurred in the performance of his duties as a member of said Board, member.~~ Any unexpended sum or sums of money remaining in the treasury of ~~said the~~ Board at the expiration of the terms of office of the members ~~thereof of the Board~~ shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1994.



H.B. 1634

## CHAPTER 567

AN ACT TO PROVIDE A FILING PERIOD FOR SPECIAL ELECTIONS  
TO FILL VACANCIES IN THE CITY OF LUMBERTON.*The General Assembly of North Carolina enacts:*

**Section 1.** Section 9(a) of Article II of the Charter of the City of Lumberton, being Chapter 115, Session Laws of 1963, as amended by Section 5 of Chapter 237, Session Laws of 1967, and Chapter 1009 of the Session Laws of 1983 reads as rewritten:

"(a) If any elected Mayor or Councilman shall refuse to be qualified, or there is a vacancy in the office of Mayor or Councilman after election and qualification, a special election shall be called by the City Council and shall be held to fill the vacancy, provided that if the vacancy occurs after the opening date for filing of candidacy under G.S. 163-294.2(c)(2) G.S. 163-294.2(c) in the year in which the term is to expire, no special election shall be held."

**Sec. 2.** Section 9(f)(1) of Article II of the Charter of the City of Lumberton, being Chapter 115, Session Laws of 1963, as amended by Section 5 of Chapter 237, Session Laws of 1967, and Chapter 1009 of the Session Laws of 1983 reads as rewritten:

"(1) Candidates may file their notices of candidacy ~~during the time prescribed by G.S. 163-294.2~~ no earlier than 12:00 noon on the tenth Friday preceding the special election and no later than 12:00 noon on the seventh Friday preceding the special election."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1994.

H.B. 550

## CHAPTER 568

AN ACT TO MAKE IMPROVEMENTS TO THE MINING ACT OF  
1971.*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 74-49 reads as rewritten:

"§ 74-49. Definitions.

Wherever used or referred to in this Article, unless a different meaning clearly appears from the context:

(1) 'Affected land' means the surface area of land that is mined, the surface area of land associated with a mining activity so that soil is exposed to accelerated erosion, the surface area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, nonpublic roads, and settling ponds.

(1a) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines 'affiliate' as a person that directly, or indirectly through

one or more intermediaries, controls, is controlled by, or is under common control of another person.

- (2) 'Borrow pit' means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.
- (3) 'Commission' means the Mining Commission created by G.S. 143B-290.
- (4) 'Department' means the Department of Environment, Health, and Natural Resources. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or ~~by such of his subordinates as he may designate~~ an employee of the Department designated by the Secretary.
- (5) 'Land' shall include submerged lands underlying any river, stream, lake, sound, or other body of water and shall specifically include, among others, estuarine and tidal lands.
- (6) 'Minerals' means soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.
- (7) 'Mining' ~~means~~ means:
  - a. The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid ~~matter, matter.~~
  - b. Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from ~~its their original location, location.~~
  - c. The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.

'Mining' does not include:

  - a. ~~It shall not include those~~ Those aspects of deep mining not having significant effect on the surface, where the affected land does not exceed one acre in area.
  - b. ~~It shall not include mining~~ Mining operations where the affected land does not exceed one acre in area.
  - c. ~~It shall not include plants~~ Plants engaged in processing minerals produced elsewhere and whose refuse does not affect more than one acre of land.
  - d. ~~It shall not include excavation~~ Excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining.
  - e. Removal of overburden and mining of limited amounts of any ores or mineral solids ~~shall not be considered mining~~ when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit, provided that no ores or mineral solids removed during ~~such~~ exploratory excavation or mining are sold, processed for sale, or consumed in the regular operation of a business, and provided further that the affected land

- resulting from any ~~such~~ exploratory excavation does not exceed one acre in area.
- (8) 'Neighboring' means in close proximity, in the immediate vicinity, or in actual contact.
- (9) 'Operator' means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, engaged in mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.
- (10) 'Overburden' means the earth, rock, and other materials that lie above the natural deposit of minerals.
- (10a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines 'parent' as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (11) 'Peak' means overburden removed from its natural position and deposited elsewhere in the shape of conical piles or projecting points.
- (12) 'Reclamation' means the reasonable rehabilitation of the affected land for useful purposes, and the protection of the natural resources of the surrounding area. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish on a continuing basis the vegetative cover, soil stability, water conditions and safety conditions appropriate to the area.
- (13) 'Reclamation plan' means the operator's written proposal as required and approved by the Department for reclamation of the affected land, which shall include but not be limited to:
- a. Proposed practices to protect adjacent surface resources;
  - b. Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;
  - c. Manner and type of revegetation or other surface treatment of the affected areas;
  - d. Method of prevention or elimination of conditions that will be hazardous to animal or fish life in or adjacent to the area;
  - e. Method of compliance with State air and water pollution laws;
  - f. Method of rehabilitation of settling ponds;
  - g. Method of control of contaminants and disposal of mining refuse;
  - h. Method of restoration or establishment of stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution;
  - i. ~~Such maps~~ Maps and other supporting documents as may be reasonably required by the Department; and
  - j. A time schedule that meets the requirements of G.S. 74-53.

- (14) 'Refuse' means all waste soil, rock, mineral, scrap, tailings, slimes, and other material directly connected with the mining, cleaning, and preparation of substances mined and shall include all waste materials deposited on or in the permit area from other sources.
- (15) 'Ridge' means overburden removed from its natural position and deposited elsewhere in the shape of a long, narrow elevation.
- (16) 'Spoil bank' means a deposit of excavated overburden or refuse.
- (16a) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines 'subsidiary' as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (17) 'Termination of mining' means cessation of mining operations with intent not to resume, or cessation of mining operations as a result of expiration or revocation of the permit of the operator. Whenever the Department shall have reason to believe that a mining operation has terminated, ~~it the Department~~ shall give the operator written notice of its intention to declare the operation terminated, and ~~he the operator~~ shall have an opportunity to appear within 30 days and present evidence that the operation is continuing; where the Department finds that such the evidence is satisfactory, it shall not make such a declaration. the Department shall not declare the mining operation terminated."

Sec. 2. G.S. 74-50 reads as rewritten:

"§ 74-50. *Permits -- General.*

(a) ~~After July 1, 1972, no~~ No operator shall engage in mining without having first obtained from the Department an operating permit ~~which that~~ covers the affected land and ~~which that~~ has not ~~been~~ terminated, ~~been~~ revoked, ~~been~~ suspended for the period in question, or otherwise become invalid. An operating permit may be modified from time to time to include land neighboring the affected land, in accordance with procedures set forth in G.S. 74-52. A separate permit shall be required for each mining operation that is not on land neighboring a mining operation for which the operator has a valid permit.

~~No permit shall be issued except in accordance with the procedures set forth in G.S. 74-51, nor modified or renewed except in accordance with the procedures set forth in G.S. 74-52.~~

~~An appeal from the Department's denial of a permit may be taken to the Mining Commission, as provided by G.S. 74-61.~~

(b) ~~Prior to the issuance of a new mining permit,~~ At the time of the application for a new mining permit or permit modifications that add owners of record of lands adjoining the permit boundaries, the operator shall make a reasonable effort, satisfactory to the Department, to notify all owners of record of land adjoining the proposed site, and to notify the chief administrative officer of the county or municipality in which the site is located that ~~he the operator~~ intends to conduct a mining operation on the site in question. The notice shall inform the owners of record and chief

administrative officers of the opportunity to submit written comments to the Department regarding the proposed mining operation and the opportunity to request a public hearing regarding the proposed mining operation. Requests for public hearing shall be made within 30 days of issuance of the notice.

(c) No permit shall become effective until the operator has deposited with the Department an acceptable performance bond or other security pursuant to G.S. 74-54. If at any time ~~said~~ the bond or other security, or any part thereof, shall lapse for any reason other than a release by the Department, and ~~said~~ the lapsed bond or security is not replaced by the operator within 30 days after notice of the lapse, the permit to which ~~it~~ the lapsed bond or security pertains shall be automatically ~~become void and of no further effect.~~ revoked.

(d) An operating permit shall be granted for a period not exceeding 10 years. If the mining operation terminates and the reclamation required under the approved reclamation plan is completed prior to the end of ~~said~~ the period, the permit shall terminate. Termination of a permit shall not have the effect of relieving the operator of any obligations ~~which he~~ that the operator has incurred under ~~his~~ an approved reclamation plan or otherwise. Where the mining operation itself has terminated, no permit shall be required in order to carry out reclamation measures under the reclamation plan.

~~An operating permit may be renewed from time to time, pursuant to procedures set forth in G.S. 74-52.~~

~~An operating permit may be suspended or revoked for cause, pursuant to procedures set forth in G.S. 74-58."~~

Sec. 3. G.S. 74-51 reads as rewritten:

"§ 74-51. *Permits -- Application, granting, conditions.*

(a) Any operator desiring to engage in mining shall make written application to the Department for a permit. ~~Such~~ The application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish ~~such~~ any other information as may be deemed necessary by the Department in order adequately to enforce this Article. The application shall be accompanied by a reclamation plan ~~which~~ that meets the requirements of G.S. 74-53. No permit shall be issued until ~~such~~ a reclamation plan has been approved by the Department. The application shall be accompanied by a signed agreement, in a form specified by the Department, that in the event a bond forfeiture is ordered pursuant to G.S. 74-59, the Department and its representatives and ~~its~~ contractors shall have the right to make whatever entries on the land and to take whatever actions may be necessary in order to carry out reclamation ~~which~~ that the operator has failed to complete.

(b) Before deciding whether to grant a new permit, the Department shall circulate copies of a notice of application for review and comment as it deems advisable. The Department shall grant or deny the permit requested as expeditiously as possible, but in no event later than 60 days after the application form and any relevant and material supplemental information reasonably required shall have been filed with the Department, or if a public hearing is held, within 30 days following the hearing and the filing of any relevant and material supplemental information reasonably required by the



Department. Priority consideration shall be given to applicants who submit evidence that the mining proposed will be for the purpose of supplying materials to the Board of Transportation.

(c) ~~Upon its determination~~ If the Department determines, based on public comment relevant to the provisions of this Article, that significant public interest exists, the Department shall conduct a public hearing on any application for a new mining ~~permit~~, permit or for permit modifications that add owners of record of lands adjoining the permit boundaries. Such The hearing shall be held before the Department reaches a final decision on the application, and in making its determination, the Department shall give full consideration to all comments submitted at the public hearing. Such The public hearing shall be held within 60 days of the ~~filing of the application~~, end of the 30-day period within which any requests for the public hearing shall be made.

(d) The Department may deny ~~such the~~ permit upon finding:

- (1) That any requirement of this Article or any rule promulgated hereunder will be violated by the proposed operation;
- (2) That the operation will have unduly adverse effects on potable groundwater supplies, ~~wildlife~~ wildlife, or fresh water, estuarine, or marine fisheries;
- (3) That the operation will violate standards of air quality, surface water quality, or groundwater quality ~~which~~ that have been promulgated by the Department;
- (4) That the operation will constitute a direct and substantial physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property, ~~property~~, excluding matters relating to use of a public road;
- (5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area;
- (6) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or
- (7) That the ~~operator~~ applicant or any parent, subsidiary, or other affiliate of the applicant or parent has not been in substantial compliance with this Article, rules adopted under this Article, or other laws or rules of this State for the protection of the environment or has not corrected all violations ~~which he~~ that the applicant or any parent, subsidiary, or other affiliate of the applicant or parent may have committed under any prior permit this Article or rules adopted under this Article and ~~which~~ that resulted in, in:
  - a. Revocation of ~~his~~ a permit,
  - b. Forfeiture of part or all of ~~his~~ a bond or other security,
  - c. Conviction of a misdemeanor under G.S. 74-64, ~~or~~
  - d. Any other court order issued under ~~G.S. 74-64~~, G.S. 74-64, or
  - e. Final assessment of a civil penalty under G.S. 74-64.

(e) In the absence of any ~~such findings~~, finding set out in subsection (d) of this section, or if adverse effects are mitigated by the applicant as determined necessary by the Department, a permit shall be granted.

(f) Any permit issued shall be expressly conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with ~~such further any other~~ reasonable and appropriate requirements and safeguards ~~as may be deemed necessary by that the Department determines~~ are necessary to assure that the operation will comply fully with the requirements and objectives of this Article. ~~Such~~ These conditions may, among others, include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds ~~such~~ screening to be feasible and desirable. Violation of any ~~such~~ conditions of the permit shall be treated as a violation of this Article and shall constitute a basis for suspension or revocation of the permit.

~~Any operator wishing any modification of the terms and conditions of his permit or of the approved reclamation plan shall submit a request for modification in accordance with the provisions of G.S. 74-52.~~

(g) If the Department denies an application for a permit, ~~it the~~ Department shall notify the operator in writing, stating the reasons for ~~its~~ the denial and any modifications in the application ~~which that~~ would make ~~it~~ the application acceptable. The operator may thereupon modify ~~his~~ application and resubmit the application, or file an ~~appeal~~, appeal as provided in G.S. 74-61, ~~but no such appeal shall be taken more than 60 days after notice of disapproval has been mailed to him at the address shown on his application. G.S. 74-61.~~

(h) Upon approval of an application, the Department shall set the amount of the performance bond or other security ~~which that~~ is to be required pursuant to G.S. 74-54. The operator shall have 60 days following the mailing of such notification after the Department mails a notice of the required bond to the operator in which to deposit the required bond or security with the Department. The operating permit shall not be issued until receipt of this deposit.

(i) When one operator succeeds to the interest of another in any uncompleted mining ~~operation~~, operation by virtue of a sale, lease, assignment, or otherwise, the Department may release the first operator from the duties imposed upon ~~him~~ the operator by this Article with reference to ~~such~~ the mining operation and transfer the permit to the successor operator; provided, that both operators have complied with the requirements of this Article and that the successor operator assumes the duties of the first operator with reference to reclamation of the land and posts a suitable bond or other security."

Sec. 4. G.S. 74-52 reads as rewritten:

"§ 74-52. Permits -- Modification, renewal.

(a) Any operator engaged in mining under an operating permit may apply at any time for modification of ~~said permit, and the permit.~~ A permittee may apply for renewal of the permit at any time during the two years prior to its the expiration date for renewal of the permit. ~~Such~~ The application shall be in writing upon forms furnished by the Department and shall fully

state the information called ~~for; in~~ for. The applicant must provide the Department with any additional information necessary to satisfy application requirements. The applicant is not required to resubmit information that remains unchanged since the time of the prior application. In addition, the applicant may be required to furnish ~~such any~~ other information as may be deemed necessary by the Department in order adequately to enforce the Article. However, it shall not be necessary to resubmit information which has not changed since the time of a prior application, where the applicant states in writing that such information has not changed.

(b) The procedure to be followed and standards to be applied in renewing a permit shall be the same as those for issuing a permit; provided, however, that in the absence of any changes in legal requirements for issuance of a permit since the date on which the prior permit was issued, the only basis for denying a renewal permit shall be an uncorrected violation of the type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of conditions then existing.

(c) A modification under this section may affect the land area covered by the permit, the approved reclamation plan coupled with the permit, or other terms and conditions of the permit. A permit may be modified to include land neighboring the affected land, but not other lands. The reclamation plan may be modified in any manner, so long as the Department determines that the modified plan fully meets the standards set forth in G.S. 74-53 and that the modifications would be generally consistent with the bases for issuance of the original permit. Other terms and conditions may be modified only where the Department determines that the permit as modified would meet all requirements of G.S. 74-50 and 74-51. No modification shall extend the expiration date of any permit issued under this Article.

~~In lieu of a modification or a renewal, an operator may apply for a new permit in the manner prescribed by G.S. 74-50 and 74-51.~~

(d) No modification or renewal of a permit shall become effective until any required changes have been made in the performance bond or other security posted under the provisions of G.S. 74-54, so as to assure the performance of obligations assumed by the operator under the permit and reclamation plan."

Sec. 5. G.S. 74-54 reads as rewritten:

"§ 74-54. Bonds.

(a) Each applicant for an operating permit, or for the renewal thereof, ~~shall file with the Department following approval of his application and shall thereafter~~ of a permit shall, following the approval of the application, file and maintain in force a bond in favor of the State of North Carolina, executed by a surety approved by the Commissioner of Insurance, in the amount set forth below. The bond herein provided for must be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only upon 60 days written notice thereof to the Department and to the operator.

(b) The applicant shall have the option of filing a separate bond for each operating permit or of filing a blanket bond covering all mining operations within the State for which ~~he~~ the applicant holds a permit. The amount of each bond shall be based upon the area of affected land to be reclaimed

under the approved reclamation plan or plans to which ~~it~~ the bond pertains, less any ~~such~~ area where reclamation has been completed and released from coverage by the Department, pursuant to G.S. 74-56, or based on ~~such~~ any other criteria established by the Mining Commission. The Department shall set the amount of the required bond in all cases, based upon a schedule established by the Mining Commission.

(c) The bond shall be conditioned upon the faithful performance of the requirements set forth in this Article and of the rules adopted ~~pursuant thereto, under this Article.~~ Upon filing the bond with the Department, ~~the operator shall lose all right, title, and interest in the bond while the bond is held by the Department.~~ Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released only upon written notification from the Department. Notification shall be given upon completion of compliance or acceptance by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

(d) In lieu of the surety bond required by this section, the operator may file with the Department a cash deposit, ~~negotiable securities, a mortgage of real property acceptable to the Department, or an irrevocable letter of credit, a guaranty of payment from an acceptable bank, an assignment of a savings account in a North Carolina acceptable bank on an assignment form prescribed by the Department.~~ Department, or other security acceptable to the Department. Security shall be subject to the release provisions of G.S. 74-56.

(e) If the license to do business in North Carolina of any surety upon a bond filed pursuant to this Article should be suspended or revoked, the operator shall, within 60 days after receiving notice thereof, substitute for ~~such the~~ surety a good and sufficient corporate surety authorized to do business in this State. Upon failure of the operator to ~~make such substitution, his permit shall automatically become void and of no effect.~~ substitute sufficient surety within the time specified, the operator's permit shall be automatically revoked."

Sec. 6. G.S. 74-54.1 reads as rewritten:

"§ 74-54.1. *Permit fees.*

(a) The Commission may establish a fee schedule for the processing of permit applications and permit renewals and modifications. The fees may vary on the basis of the acreage, size, and nature of the proposed or permitted operations or modifications. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing applications for permits and permit renewals and modifications and for related compliance activities and safeguards to prevent unusual fee assessments that would impose a serious economic burden on an individual applicant or a class of applicants.

(b) The total amount of permit fees collected for any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing applications for permits and permit renewals and modifications and for related compliance costs in the prior fiscal year. A fee for an application for a new permit may not exceed two thousand five



hundred dollars (\$2,500), and a fee for an application to renew or modify a permit may not exceed five hundred dollars (\$500.00). The Mining Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Mining Account and shall be applied to the costs of administering this Article.

(c) The Department shall annually report on or before 1 September to the Environmental Review Commission on the cost of implementing this Article. The report shall include the fees established, collected, and disbursed under this section and any other information requested by the General Assembly or the Commission."

Sec. 7. G.S. 74-56 reads as rewritten:

"§ 74-56. *Inspection and approval of reclamation; bond release or forfeiture.*

(a) The Department may direct investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any mining operation for the purpose of determining compliance with this Article and any rules adopted under this Article and for determining compliance with the terms and conditions of a mining permit, but for no other purpose. No person shall refuse entry or access to any authorized representative of the Department who enters the mining operation for purposes of inspection or other official duties and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with the representative while the representative is carrying out official duties. Upon arriving at the site, the representative of the Department shall make every reasonable effort to notify the operator or the operator's agent that the representative of the Department intends to inspect the site. Upon receipt of the operator's annual report or report of completion of reclamation and at any other reasonable time the Department may elect, the Department shall cause the permit area to be inspected to determine whether the operator has complied with the reclamation plan, the requirements of this Article, any rules promulgated hereunder, adopted under this Article, and the terms and conditions of his the permit. Accredited representatives of the Department shall have the right at all reasonable times to enter upon the land subject to the permit for the purpose of making such inspection and investigation.

(b) The operator shall proceed with reclamation as scheduled in the approved reclamation plan. ~~Following its inspection, the~~ The Department shall conduct an inspection and give written notice to the operator of any deficiencies noted. The operator shall thereupon commence action within 30 days to rectify these deficiencies and shall diligently proceed until they have been corrected. The Department may extend performance periods referred to in this section and in G.S. 74-53 for delays clearly beyond the operator's control, but only in cases where the Department finds that the operator is making every reasonable effort to comply.

(c) Upon completion of reclamation of an area of affected land, the operator shall notify the Department. The Department shall make an inspection of the area, and if it finds that reclamation has been properly completed, it shall notify the operator in writing and release ~~him~~ the operator from further obligations regarding such the affected land. At the same time it the Department shall release all or the appropriate portion of



any performance bond or other security ~~which he~~ that the operator has posted under G.S. 74-54.

(d) If at any time the Department finds that reclamation of the permit area is not proceeding in accordance with the reclamation plan and that the operator has failed within 30 days after notice to commence corrective action, or if the Department finds that reclamation has not been properly completed in conformance with the reclamation plan within two years, or longer if authorized by the Department, after termination of mining on any segment of the permit area, ~~it~~ the Department shall initiate forfeiture proceedings against the bond or other security filed by the operator under G.S. 74-59. In addition, ~~such failure to implement the reclamation plan~~ shall constitute grounds for suspension or revocation of the operator's permit, as provided in G.S. 74-58."

Sec. 8. G.S. 74-58 reads as rewritten:

"§ 74-58. *Suspension or revocation of permit.*

(a) Whenever the Department shall have reason to believe that a violation of (i) this Article, (ii) any rules ~~promulgated hereunder~~, adopted under this Article, or (iii) the terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of ~~such fact~~ the apparent violation upon the operator, specifying the facts constituting ~~such the~~ the apparent violation and informing the operator of ~~his the operator's~~ the operator's right to ~~a hearing~~, an informal conference with the Department. The date for ~~such hearing~~ an informal conference shall be not less than ~~30~~ 15 nor more than ~~60~~ 30 days after the date of the notice, unless the Department and the operator shall mutually agree on another date. ~~The operator may appear at the hearing, either personally or through counsel, and present such evidence as he may desire in order to prove that no violation has taken place or exists.~~ If the operator or ~~his the operator's~~ representative does not appear at the ~~hearing~~, informal conference, or if the Department following the ~~hearing~~ informal conference finds that there has been a violation, the Department may suspend the permit until ~~such time as~~ the violation is corrected or may revoke the permit where the violation appears to be willful.

(b) The effective date of any ~~such~~ suspension or revocation shall be 30 days following the date of the decision. ~~An appeal to the Mining Commission~~ The filing of a petition for a contested case under G.S. 74-61 shall stay ~~such the effective date until the Commission's decision. A further appeal to superior court under G.S. 74-61 shall stay such effective date until the date of the superior court judgment.~~ Commission makes a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon ~~such action~~, an action for injunctive relief.

(c) Any operator whose permit has been suspended or revoked shall be denied a new permit or a renewal of ~~the old~~ an existing permit to engage in mining until ~~he the operator~~ gives evidence satisfactory to the Department of ~~his the operator's~~ ability and intent to fully comply with the provisions of

this Article and rules ~~promulgated hereunder~~, adopted under this Article, and the terms and conditions of ~~his~~ the permit, including the approved reclamation plan, and that ~~he~~ the operator has satisfactorily corrected all previous violations."

Sec. 9. G.S. 74-61 reads as rewritten:

"§ 74-61. *Administrative and judicial review of decisions.*

~~Any~~ An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within ~~60~~ 30 days after the Department makes the decision. The Commission shall make the final decision in a contested case under this section. Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

Sec. 10. G.S. 74-64(a) reads as rewritten:

"(a) Civil Penalties.

- (1) a. A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Department against any person who fails to secure a valid operating permit prior to engaging in mining, as required by G.S. 74-50. No civil penalty shall be assessed until the operator has been given notice of the violation pursuant to G.S. 74-60. Each day of a continuing violation shall constitute a separate violation and a civil penalty of not more than five thousand dollars (\$5,000) per day may be assessed for each day the violation continues.
  - b. Any permitted operator who violates any of the provisions of this Article, any rules ~~promulgated thereunder~~, adopted under this Article, or any of the terms and conditions of ~~his~~ the mining permit shall be subject to a civil penalty of not more than ~~one~~ five hundred dollars ~~(\$100.00)~~ (\$500.00). Each day of a continuing violation shall constitute a separate violation. Prior to the assessment of any ~~such~~ civil penalty, written notice of the violation shall be given. The notice shall describe the violation with reasonable particularity, shall specify a time period reasonably calculated to permit the violator to complete actions to correct the violation, and shall state that failure to correct the violation within that period may result in the assessment of a civil penalty.
  - c. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by ~~his~~ the noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.
- (2) The Department shall determine the amount of the civil penalty to be assessed pursuant to G.S. 74-64(a)(1) and shall give notice to the operator of the assessment of the civil penalty pursuant to ~~G.S. 74-60~~, G.S. 74-60, or by any means authorized by G.S. 1A-1, Rule 4. ~~Said~~ The notice shall set forth in detail the violation or

violations for which the civil penalty has been assessed. The operator may appeal the assessment of any civil penalty assessed pursuant to this section in accordance with the procedures set forth in G.S. 74-61.

- (3) ~~If payment of any civil penalty assessed pursuant to this section is not received by the Department or equitable settlement reached within 30 days following notice to the operator of the assessment of the civil penalty, or within 30 days following the denial of any appeal by the operator pursuant to G.S. 74-61, the Department shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty. The notice of assessment shall direct the violator to pay the assessment or contest the assessment as provided in G.S. 74-61. If the violator does not pay the assessment within 30 days after receipt of the notice of assessment or within 30 days after receipt of the final agency decision, where the assessment has been contested, the Department shall request the Attorney General to institute a civil action in superior court to recover the amount of the penalty. A civil action under this section shall be filed within three years of the date the final agency decision was served on the violator.~~
- (4) ~~All funds collected pursuant to this section shall be placed in the special fund created pursuant to G.S. 74-59 and shall be used to carry out the purposes of this Article, credited to the General Fund as nontax revenue.~~
- (5) In addition to other remedies, the Department may request the Attorney General to institute any appropriate action or proceedings to prevent, restrain, correct or abate any violation of this Article or any rules ~~promulgated hereunder,~~ adopted under this Article, or the obstruction, hampering, or interference with an authorized representative of the Department while the representative is carrying out official duties pursuant to this Article."

Sec. 11. This act becomes effective 1 July 1994 and applies to any application for a new permit or modification or renewal of an existing permit filed on or after that date and to any penalty imposed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1994.

S.B. 803

## CHAPTER 569

AN ACT TO CLARIFY THE LAWS RELATING TO THE STATE'S JURISDICTION OVER PROVIDERS OF HEALTH CARE BENEFITS, TO MAKE TECHNICAL AND OTHER AMENDMENTS TO THE PROVISIONS OF THE HEALTH CARE REFORM ACT OF 1993 CONCERNING SMALL EMPLOYER HEALTH PLANS, AND TO MAKE TECHNICAL AMENDMENTS TO AND DELAY THE IMPLEMENTATION OF THE DISTRICT DIVERSITY REQUIREMENT UNDER THE PSYCHOLOGY PRACTICE ACT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 58-49-1 reads as rewritten:

"§ 58-49-1. *Purposes.*

The purposes of this ~~Article~~ section and G.S. 58-49-5 through G.S. 58-49-25 are: To give the State jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examinations by the State if the provider of health care benefits is unable to show it is subject to the exclusive jurisdiction of another jurisdiction; governmental agency; to make such a provider of health care benefits subject to the laws of the State if it cannot show that it is subject to the exclusive jurisdiction of another jurisdiction; governmental agency; and to disclose the purchasers of such health care benefits whether or not the plans are fully insured."

**Sec. 2.** G.S. 58-49-5 reads as rewritten:

"§ 58-49-5. *Authority and jurisdiction of Commissioner.*

Notwithstanding any other provision of law, and except as provided in this Article, any person that provides coverage in this State for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, ~~professional~~ professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the exclusive jurisdiction of the Commissioner, unless the person shows that while providing such services it is subject to the jurisdiction of another agency or subdivision of this State or of the federal government."

**Sec. 3.** G.S. 58-49-10 reads as rewritten:

"§ 58-49-10. *How to show jurisdiction.*

A person may show that it is subject to the exclusive jurisdiction of another agency or subdivision of this State or the federal government, by providing to the Commissioner the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services. If no documentation is issued by that other agency, the person may provide a certification by an official of that agency that states that the person is under the exclusive jurisdiction of that agency."

**Sec. 4.** G.S. 58-49-15 reads as rewritten:

"§ 58-49-15. *Examination.*

Any person that is unable to show under G.S. 58-49-10 that it is subject to the exclusive jurisdiction of another agency or subdivision of this State or of the federal government, shall submit to an examination by the Commissioner to determine the organization and solvency of the person, and to determine whether or not such person complies with the applicable provisions of ~~Articles 1 through 64 or 65 and 66 or 67 of this Chapter.~~

**Sec. 5.** G.S. 58-49-20 reads as rewritten:

"§ 58-49-20. *Subject to State laws.*

Any person unable to show that it is subject to the exclusive jurisdiction of another agency or subdivision of this State or the federal government, shall be subject to all appropriate provisions of ~~Articles 1 through 64 or 65 and 66 or 67 of this Chapter~~ regarding the conduct of its business."

**Sec. 6.** G.S. 58-50-110 is amended by adding a new subdivision to read:



"(5a) 'Case characteristics' means the demographic factors age, gender, family size, and geographic location."

Sec. 7. G.S. 58-50-130(a) is amended by adding a new subdivision to read:

"(4a) A carrier may continue to enforce reasonable employer participation and contribution requirements on small employers applying for coverage; however, participation and contribution requirements may vary among small employers only by the size of the small employer group and shall not differ because of the health benefit plan involved. In applying minimum participation requirements to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether an applicable participation level is met. 'Qualifying existing coverage' means benefits or coverage provided under: (i) Medicare, Medicaid, and other government funded programs; or (ii) an employer-based health insurance or health benefit arrangement, including a self-insured plan, that provides benefits similar to or in excess of benefits provided under the basic health care plan. An accountable health carrier shall not enforce participation or contribution requirements on member small employers, as defined in G.S. 143-622(18), unless those requirements meet with the standards adopted by the North Carolina Health Purchasing Alliance Board."

Sec. 8. G.S. 58-50-130(b) reads as rewritten:

"(b) For all small employer health benefit plans that are subject to this section and are issued on or after January 1, 1995, premium rates for health benefit plans subject to this section are subject to the following provisions:

- (1) Small employer carriers shall use an adjusted-community rating methodology in which the premium for each small employer can vary only on the basis of the eligible employee's or dependent's age as determined in accordance with subdivision (6) of this subsection, the gender of the eligible employee or dependent, number of family members covered, or geographic area as determined under subdivision (7) of this subsection;
- (2) Rating factors related to age, gender, number of family members covered, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to the Commissioner's review;
- (3) Small employer carriers shall not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changed by twenty percent (20%) or more or benefits are changed;
- (4) Carriers participating in an Alliance in accordance with the Health Care Purchasing Alliance Act may apply a different community rate to business written in that Alliance;
- (5) In the case of health benefit plans issued before January 1, 1995, a premium rate for a rating period, adjusted pro rata for any rating period of less than one year, may vary from the adjusted



community ~~rating index line, rate,~~ as determined by the small employer carrier and in accordance with subdivisions (1), (2), (3), and (4) of this subsection, for a period of two years after January 1, 1995, as follows:

- a. On January 1, 1995, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to those employers under the rating system ~~for that class of business~~ shall not vary from the adjusted community rate by more than twenty percent ~~(20%) of the index rate, (20%),~~ adjusted pro rata for any rating period of less than one year;
  - b. On January 1, 1996, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to those employers under the rating system ~~for that class of business~~ shall not vary from the adjusted community rate by more than ten percent ~~(10%) of the index rate, (10%),~~ adjusted pro rata for any rating period of less than one year; and
  - c. On January 1, 1997, all small employer benefit plans that are subject to this section and are issued by small employer carriers before January 1, ~~1997, 1995,~~ and that are renewed on or after January 1, 1997, renewal rates shall be based on the same adjusted community rating standard applied to new business.
- (6) For the purposes of subsection (b) of this section, a small employer carrier shall not use age brackets of less than five years;
  - (7) For the purposes of subsection (b) of this section, a carrier shall not apply different geographic rating factors to the rates of small employers located within the same county; and
  - (8) The Department ~~of Insurance may, by rule, establish regulations~~ may adopt rules to administer this subsection and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection. Those ~~regulations~~ rules shall include consideration of differences based on the following:
    - a. Health benefit plans that use different provider network arrangements may be considered separate plans for the purposes of determining the rating in subdivision (1) of this subsection, provided that the different arrangements are expected to result in substantial differences in claims costs;
    - b. Except as provided for in sub-subdivision a. ~~above, of this subdivision,~~ differences in premium rates charged for different health benefit plans shall be reasonable and reflect objective differences in plan design, but shall not permit differences in premium rates ~~due to~~ because of the demographics of groups assumed to select particular health benefit plans; and
    - c. Small employer carriers shall apply allowable rating factors consistently with respect to all small employers. Adjustments

in rates for age, gender, and geography shall not be applied individually. Any such adjustment shall be applied uniformly to the rate charged for all employee enrollees of the small employer."

Sec. 9. G.S. 58-53-50(5) reads as rewritten:

"(5) He failed to continue his insurance for the entire maximum period of ~~three consecutive months~~ one year following termination of active employment as provided for in Part 1 of this Article, unless that failure to continue was ~~due to a~~ because of change of insurer by the employer and ~~said~~ the change of insurer was consummated during the ~~three-month~~ one year continuation period. In that event the employee or member shall be entitled to be issued a converted policy by the insurer that provided the group policy to the employer ~~prior to~~ before the change of insurer."

Sec. 10. G.S. 58-53-55 reads as rewritten:

"§ 58-53-55. *Time limit.*

In order to be eligible for conversion, written application and the first premium payment for the converted policy must be made to the insurer not later than 31 days after the date of termination of insurance provided under Part 1 of this Article. The effective date of the converted policy shall be the day following the later of:

- (1) The termination of insurance under the group policy when it is not replaced by one providing similar coverage within 31 days of the termination date of the immediately prior group plan; or
- (2) The termination of the ~~three months~~ one year of continued coverage under the group policy or policies."

Sec. 11. G.S. 143-623 reads as rewritten:

"§ 143-623. *Health benefit plans subject to Article.*

A health benefit plan is subject to this Article if it provides health benefits for small employers in accordance with the criteria set forth in G.S. 58-50-115 and is issued through an alliance pursuant to G.S. 143-628. and if any of the following conditions are met:

- (1) ~~Any part of the premiums or benefits is paid by a small employer, or any covered individual is reimbursed, whether through wage or adjustments or otherwise, by a small employer for any portion of the premium;~~
- (2) ~~The health benefit plan is treated by the employer or any of the covered self-employed individuals as part of a plan or program for the purposes of Sections 106, 125, or 162 of the United States Internal Revenue Code; or~~
- (3) ~~The small employer has permitted payroll deductions for the eligible enrollees for the health benefit plans."~~

Sec. 12. G.S. 143-625 is amended by adding a new subsection to read:

"(k) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the Board, or its employees or agents, for any action taken in good faith by them in the performance of their powers and duties as defined under G.S. 143-626."

Sec. 13. G.S. 90-270.20(a) reads as rewritten:

"(a) Health services, as defined in ~~G.S. 90-270.2(e) and G.S. 90-270.2(h)~~, G.S. 90-270.2(4) and G.S. 90-270.2(8), may be provided by qualified licensed psychological associates, qualified licensed psychologists holding provisional, temporary, or permanent licenses, or qualified applicants. Qualified licensed psychological associates, qualified licensed psychologists holding provisional or temporary licenses, or qualified applicants may provide health services only under supervision as specified in the duly adopted rules of the Board."

Sec. 14. G.S. 90-270.2(5) reads as rewritten:

- "(5) Institution of higher education. -- A university, a college, a professional school, or another institution of higher learning that:
- In the United States, is regionally accredited by bodies approved by the ~~Council on~~ Commission on Recognition of Postsecondary Accreditation. Accreditation or its successor.
  - In Canada, holds a membership in the Association of Universities and Colleges of Canada.
  - In another country, is accredited by the comparable official organization having this authority."

Sec. 15. Section 7 of Chapter 375 of the Session Laws of 1993 reads as rewritten:

"Sec. 7. This act becomes effective October 1, 1993. The Governor shall implement the requirement under G.S. 90-270.6 that Board members reside in different congressional districts by taking this factor into account when ~~vacancies occur in the current terms or the current terms expire, filling vacancies on or after July 1, 1995, and when making appointments to terms that commence on or after July 1, 1995.~~"

Sec. 16. Sections 6 through 8 of this act become effective January 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1994.

H.B. 120

## CHAPTER 570

AN ACT TO AMEND THE OPEN MEETINGS LAWS AND TO AMEND THE PUBLIC RECORDS LAW AS IT RELATES TO THE HOSPITAL LICENSURE ACT AND THE JOINT MUNICIPAL ELECTRIC POWER AND ENERGY ACT.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 143-318.10 reads as rewritten:

"§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, 'public body' means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units,

constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members; and

- (1) ~~Exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function; and~~
- (2) ~~Is established by (i) the State Constitution, (ii) an act or resolution of the General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an executive order of the Governor or comparable formal action of the head of a principal State office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or of a division thereof.~~

members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, 'public body' means (1) the governing board of a 'public hospital' as defined in G.S. 159-39 and (2) each committee of a public body, except a committee of the governing board of a public hospital if the committee is not a policy-making body. In addition, for the purposes of this Article 'public body' means any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of that such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) 'Public body' does not include and shall not be construed to include (1) meetings among a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b)(2) of this section, or (2) meetings among the medical staff of a public hospital.

(d) 'Official meeting' means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, ~~excluding any executive sessions including any closed sessions~~ held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of ~~G.S. 132-6, the Public Records Law, G.S. 132-1 et seq.;~~ provided, however, that minutes of a closed session conducted in compliance



with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

Sec. 2. G.S. 143-318.11 reads as rewritten:

"§ 143-318.11. ~~Executive sessions.~~ Closed sessions.

(a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold an executive session a closed session and exclude the public; public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award;
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded;
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body;
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or



another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- ~~(1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. At the conclusion of all negotiations with regard to the acquisition or lease of real property, if final authorization to acquire or lease is to be given, it shall be given at an open meeting.~~
- ~~(2) To consider and authorize the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a part.~~
- ~~(3) To consider and authorize the acquisition by any means of paintings, sculptures, objects of virtu, artifacts, manuscripts, books and papers, and similar articles and objects that are or will be part of the collections of a museum, library, or archive.~~
- ~~(4) To consider the validity, settlement, or other disposition of a claim against or on behalf of the public body or an officer or employee of the public body or in which the public body finds that it has a substantial interest; or the commencement, prosecution, defense, settlement, or litigation of a potential or pending judicial action or administrative proceeding in which the public body or an officer or employee of the public body is a party or in which the public body finds that it has a substantial interest. During such an executive session, the public body may give instructions to an attorney or other agent concerning the handling or settlement of a claim, judicial action, or administrative proceeding. If a public body has considered a settlement in executive session, the terms of that settlement shall be reported to the public body and entered into its minutes within a reasonable time after the settlement is concluded.~~
- ~~(5) To consult with an attorney employed or retained to represent the public body, to the extent that confidentiality is required in order to preserve the attorney-client privilege between the attorney and the public body.~~
- ~~(6) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.~~
- ~~(7) To consider matters dealing with specific patients (including but not limited to all aspects of admission, treatment, and discharge; all medical records, reports, and summaries; and all charges, accounts, and credit information pertaining to such a patient).~~
- ~~(8) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a public officer or employee or prospective public officer or employee; or to hear or investigate a complaint,~~

~~charge or grievance by or against a public officer or employee. A public body may consider the appointment or removal of a member of another body in executive session but may not consider or fill a vacancy among its own membership except in an open meeting.~~

~~Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. If a public body considers an appointment to another body, except a committee composed of members of the public body, in executive session, it shall, before making that appointment, present at an open meeting a written list of the persons then being considered for the appointment, and that list shall on the same day be made available for public inspection in the office of the clerk or secretary to the public body. The public body may not make the appointment before the seventh day after the day on which the list was presented.~~

- ~~(9) To consider the employment, performance, or discharge of an independent contractor. Any action employing or authorizing the employment or discharging or directing the discharge of an independent contractor shall be taken at an open meeting.~~
- ~~(10) To hear, consider, and decide (i) disciplinary cases involving students or pupils and (ii) questions of reassignment of pupils under G.S. 115-178.~~
- ~~(11) To identify candidates for, assess the candidates' worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body.~~
- ~~(12) To consider information, when State or federal law (i) directs that the information be kept confidential or (ii) makes the confidentiality of the information a condition of State or federal aid.~~
- ~~(13) To consider and adopt contingency plans for dealing with, and consider and take action relating to, strikes, slowdowns, and other collective employment interruptions.~~
- ~~(14) To consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent.~~
- ~~(15) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.~~
- ~~(16) To consider and decide matters concerning specific inmates of the correction system or security problems of the correction system.~~
- ~~(17) To hear, consider, and decide matters involving admission, discipline, or termination of members of the medical staff of a public hospital. Final action on an admission or termination shall be reported at an open meeting.~~
- ~~(18) To consider and give instructions relating to the setting or negotiation of airport landing fees or the negotiation of contracts, including leases, concerning the use of airport facilities. Final~~

~~action approving landing fees or such a contract shall be taken in an open meeting.~~

- (19) ~~To plan investigations and receive investigative reports requested by a board of elections concerning election frauds, irregularities, election contests, or violations of the election laws. Following a public hearing during which it is alleged or apparent that any election official may have committed an act of misconduct, a board of elections may meet in executive session to deliberate, adjudicate, and reach its decision on whether further action shall be ordered or whether no further action shall be ordered against any election official. Each member's vote on the decision shall be a matter of public record.~~
- (20) ~~To consider and authorize acquisitions, mergers, joint ventures, or other competitive business activities by or on behalf of: (i) a hospital facility and a nonprofit corporation to which it has been sold or conveyed pursuant to G.S. 131E-8; (ii) any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed; or (iii) any subsidiary of either nonprofit corporation.~~

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) ~~Calling an Executive Session, a Closed Session.~~ -- A public body may hold ~~an executive session~~ a closed session only upon a motion duly made and adopted at an open meeting. ~~The motion shall state the general purpose of the executive session and must be approved by the vote of a majority of those present and voting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.~~

~~(d) Minutes of Executive Session.~~ -- ~~Notwithstanding the provisions of G.S. 132-6, minutes and other records made of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session.~~

Sec. 3. G.S. 143-318.16B reads as rewritten:

*"§ 143-318.16B. ~~Attorney's fees awarded to prevailing party.~~ Assessments and awards of attorneys' fees.*

~~In any~~ When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court ~~shall~~ may make written findings specifying the prevailing party or parties, and ~~shall may~~ award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed."

Sec. 4. Article 33C of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"§ 143-318.16C. Accelerated hearing; priority.

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

"§ 143-318.16D. Local acts.

Any reference in any city charter or local act to an 'executive session' is amended to read 'closed session'."

Sec. 5. G.S. 143B-282.1(a)(3) reads as rewritten:

"(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in an executive session a closed session pursuant to G.S. 143-318.11."

Sec. 6. G.S. 90-16 reads as rewritten:

"§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.

The Board of Examiners shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The Board of Examiners shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The Board of Examiners shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the Board of Medical Examiners of the State of North Carolina, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in an executive session a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the



Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician."

Sec. 7. G.S. 90-270.15(c) reads as rewritten:

"(c) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license is denied or to whom licensure is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of treatment by the licensee or applicant. The Board may close a hearing to the public and receive in ~~executive session~~ closed session evidence involving or concerning the treatment or delivery of psychological services to a client or a patient who has not consented to the public disclosure of such treatment or services as may be necessary for the protection and rights of such patient or client of the accused applicant or licensee and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries or interviews conducted in connection with licensing or disciplinary matters will not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of such investigation, inquiry, or hearing except that identifying information concerning the treatment or delivery of services to a patient or client who has not consented to the public disclosure of such treatment or services may be deleted; and provided, further, that if any such record, paper or other document containing



information theretofore collected and compiled by or on behalf of the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment or delivery of psychological services to a patient or client who has not consented to the public disclosure of such treatment or services."

Sec. 8. G.S. 90-390(c) reads as rewritten:

"(c) Except as otherwise provided in this Article, the procedure for revocation, suspension, refusal, or other limitations of the certificate shall be in accordance with the provisions of Chapter 150B of the General Statutes. In any proceeding or record of any hearing before the Board, and in any complaint or notice of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate and in any decision rendered by the Board, the Board shall endeavor to withhold from public disclosure the identity of any counselees or clients who have not consented to the public disclosure of treatment by the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate. The Board may close a hearing to the public and receive in ~~executive session~~ a closed session evidence concerning the treatment or delivery of pastoral counseling services to a counselee or a client who has not consented to public disclosure of treatment or services, as may be necessary for the protection of the counselee's or client's rights and the full presentation of relevant evidence. All records, papers, and documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with certification or disciplinary matters are not public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate, any notice to any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding is a public record within the meaning of Chapter 132 of the General Statutes, except that identifying information concerning the treatment or delivery of services to a counselee or client who has not consented to the public disclosure of such treatment or services may be deleted. Any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, that is received and admitted in evidence in any hearing before the Board shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment or delivery of pastoral counseling services to a counselee or client who has not consented to public disclosure of the treatment or services."

Sec. 9. G.S. 120-131(b)(4) reads as rewritten:

"(4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing

committee or subcommittee meeting not held in executive session, session, closed session, or on the floor of a house."

**Sec. 10.** Article 5 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part F. Confidential Information.

"§ 131E-97. Confidentiality of patient information.

(a) Medical records compiled and maintained by health care facilities in connection with the admission, treatment, and discharge of individual patients are not public records as defined by Chapter 132 of the General Statutes.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by health care facilities in connection with the admission, treatment, and discharge of individual patients are not public records as defined by Chapter 132 of the General Statutes.

"§ 131E-97.1. Confidentiality of personnel information.

(a) Except as provided in subsection (b) of this section, the personnel files of employees or former employees, and the files of applicants for employment maintained by a public hospital as defined in G.S. 159-39 are not public records as defined by Chapter 132 of the General Statutes.

(b) The following information with respect to each employee of a public hospital, as defined by G.S. 159-39, is a matter of public record: name; age; date of original employment or appointment; beginning and ending dates, position title, position descriptions, and total compensation of current and former positions; and date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

"§ 131E-97.2. Confidentiality of credentialing information.

Information acquired by a public hospital, as defined in G.S. 159-39, or by a State-owned or State-operated hospital, or by persons acting for or on behalf of a hospital, in connection with the credentialing and peer review of persons having or applying for privileges to practice in the hospital is confidential and is not a public record under Chapter 132 of the General Statutes; provided that information otherwise available to the public shall not become confidential merely because it was acquired by the hospital or by persons acting for or on behalf of the hospital.

"§ 131E-97.3. Confidentiality of competitive health care information.

Information relating to competitive health care activities by or on behalf of hospitals shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a public hospital, as defined in G.S. 159-39, shall be a public record unless otherwise exempted by law."

**Sec. 11.** Article 2 of Chapter 159B of the General Statutes is amended by adding a new section to read:

"§ 159B-38. Confidentiality of contract discussions.

Discussions of a proposed or existing contract to which a joint agency may be or is a party for the construction, ownership, or operation of works, plants, and facilities for or incident to the generation, transmission, or use of electric power and energy or the purchase, sale, exchange, interchange, wheeling, pooling, transmission, or use of electric power and energy shall be confidential and information relating to such discussions shall not be a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a joint agency as defined by G.S. 159B-3 shall be a public record unless otherwise exempted by law."

**Sec. 12.** This act becomes effective October 1, 1994, and shall not affect pending litigation.

In the General Assembly read three times and ratified this the 23rd day of June, 1994.

S.B. 508

**CHAPTER 571**

AN ACT TO PROVIDE THE SAME LEGAL AUTHORITY AND LIMITED LIABILITY TO IMMIGRATION AND NATURALIZATION SERVICE OFFICERS WHO WORK WITH STATE OR LOCAL OFFICERS AS ARE ACCORDED OTHER FEDERAL OFFICERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15A-406(a) reads as rewritten:

"(a) For purposes of this section, 'federal law enforcement officer' means any of the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms in the performance of their duties:

- (1) United States Secret Service special agents;
- (2) Federal Bureau of Investigation special agents;
- (3) Bureau of Alcohol, Tobacco and Firearms special agents;
- (4) United States Naval Investigative Service special agents;
- (5) Drug Enforcement Administration special agents;
- (6) United States Customs Service officers;
- (7) United States Postal Service inspectors;
- (8) Internal Revenue Service special agents;
- (9) United States Marshals Service marshals and deputies;
- (10) United States Forest Service officers;
- (11) National Park Service officers; ~~and~~
- (12) United States Fish and Wildlife Service ~~officers,~~ officers; ~~and~~
- (13) Immigration and Naturalization Service officers."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1994.

S.B. 118

**CHAPTER 572**

AN ACT TO CHANGE THE PROCESS OF APPEALING UNDER THE STATE PERSONNEL ACT CERTAIN PERSONNEL DECISIONS OF LOCAL APPOINTING AUTHORITIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 126-37 reads as rewritten:

*"§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.*

(a) Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, 150B-36, except as provided in subsection (b1) of this section. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. ~~The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.~~

~~(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.~~

(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that



discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other appeals, except that the decision of the State Personnel Commission shall be final.

(c) If the local appointing authority is other than a board of county commissioners, the ~~employee local appointing authority~~ must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the ~~filing~~ receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

Sec. 2. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. ~~The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding~~



decision is required by applicable federal standards. In these two cases, the State Personnel Commission's decision shall be ~~binding~~, binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority."

**Sec. 3.** This act becomes effective January 1, 1995, and applies to cases filed on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

S.B. 1669

**CHAPTER 573**

**AN ACT TO AUTHORIZE THE COUNTY OF MECKLENBURG TO PURCHASE TELECOMMUNICATIONS, DATA PROCESSING, AND DATA COMMUNICATIONS EQUIPMENT, SUPPLIES, AND SERVICES ON A REQUEST FOR PROPOSAL BASIS.**

*The General Assembly of North Carolina enacts:*

**Section 1.** (a) Because of the:

- (1) Highly complex and innovative nature of telecommunications, data processing, and data communications equipment, supplies, and services; and
- (2) Desirability of a single point of responsibility for the development of contracts for products and services which include in their scope combinations of design, installation, operation, management, and service and maintenance responsibilities over prolonged periods of time

in some instances it may be beneficial to a county to award a contract on the basis of factors other than cost alone, including but not limited to, (i) system design, (ii) operation experience, (iii) system reliability, (iv) long-term operational costs, (v) compatibility with existing equipment, and (vi) emerging technology.

Therefore, notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, or any other general, special, or local law, a contract entered into between a county and any person selected as a responsible proposer pursuant to this section may be awarded, negotiated, and entered into in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for that county.

(b) This section establishes special procedures for the purchase and lease of telecommunications, data processing, and data communications equipment, supplies, and services, and applies only to those purchases and leases.

(c) A county shall give notice that it is requesting proposals as follows:

- (1) By mailing notice of request for proposals a minimum of 10 days prior to the time specified for opening of said proposal to suppliers represented on the county's current relevant bid list; and
- (2) By advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the county. The advertisement shall state the time

and place where the request for proposals may be had, and the time and place for opening of said proposals, and shall reserve to the county the right to reject any or all such proposals.

All proposals shall be opened in public. Proposals shall be sealed if the invitation to propose so specifies.

(d) The county shall require in its request for proposals that each proposal to be submitted:

(1) Shall include:

- a. Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract;
- b. The ability of the proposer to secure adequate financing;
- c. Proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;

(2) Language clearly identifying and specifying all elements of cost which would become charges to the county, in whichever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, (i) the cost of purchase or lease of equipment, (ii) the cost of design, installation, operation, management, and maintenance of any system, and (iii) the cost of any services performed by the proposer; and

(3) Shall include such other information as the county may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

The county may prescribe the form and content of such proposal and, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of such proposal. The county may evaluate such proposals based on one or more of the factors set forth above as the county determines to be appropriate.

(e) The county may make a contract award to any responsible proposer selected pursuant to this section based on a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the purchase and/or lease of equipment and performance of the services set forth in the request for proposals and the response thereto. Such determination is conclusive.

Sec. 2. This act applies to the County of Mecklenburg only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

H.B. 2014

CHAPTER 574

AN ACT RELATING TO THE DEFINITION OF "SUBDIVISION" FOR THE PURPOSE OF SUBDIVISION REGULATION IN STANLY COUNTY.

*The General Assembly of North Carolina enacts:*

Section 1. Chapter 930 of the 1987 Session Laws, as amended by Chapter 504 of the 1991 Session Laws, reads as rewritten:

"§ 153A-335. 'Subdivision' defined.

For purposes of this Part, 'subdivision' means all divisions of a ~~residentially zoned original parcel or lot of record existing as of January 1, 1989, where 10 or more lots or parcels (not including residual land of the original parcel or lot of record) have been or will be created. Any subsequent conveyance of residentially zoned land from an original parcel or lot of record effective January 1, 1989, by a recorded deed, whether recorded prior to or subsequent to the ratification of this section, conveying more than 10 acres of land shall also be deemed an original parcel or lot of record as hereinbefore defined.~~ tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or change in existing streets. The following shall not be included within this definition nor be subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots ~~where~~ if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown ~~in its subdivision regulations;~~ by the regulations prescribed by this act;

(2) The division of land into parcels greater than ~~10~~ five acres ~~where no street right-of-way dedication is involved;~~ the grantor or developer records a right-of-way agreement prior to or simultaneously with the recording of the deed, which said agreement provides for access to the parcel by right-of-way at least 60 feet in width and contains an agreement for construction and maintenance of the road;

(3) The public acquisition by purchase of strips of land for widening or opening streets; and

(4) ~~Divisions of any land to be sold, leased or used for commercial or industrial purposes, which is commercially or industrially zoned by the county zoning ordinance at the time of division. The conveyance of a tract or parcel of land with a minimum of 20,000 square feet exclusive of the State right-of-way for a road with at least 100 feet frontage upon a State-maintained road;~~

(5) The division of land pursuant to an order of the General Court of Justice;

(6) The conveyance of a lot or tract for the purpose of dividing land among tenants in common, all of whom inherited, by intestacy or by will, the land from a common ancestor; and

(7) The division of a tract in single ownership whose entire area is no greater than two acres into no more than three lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards of the county, as shown by the subdivision regulations contained in this act."

Sec. 2. This act applies to Stanly County only.

**Sec. 3.** This act is effective upon ratification and shall not have any effect on subdivisions submitted for approval to the Stanly County Planning Department prior to the effective date of this act.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

H.B. 2048

## CHAPTER 575

## AN ACT RELATING TO MAYLAND COMMUNITY COLLEGE'S CONTRACT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 115D-59 reads as rewritten:

"§ 115D-59. *Multiple-county administrative areas.*

Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Community Colleges as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this Chapter, for financial support of the institution, ~~selection of trustees,~~ termination of the contract and the administrative area, and any other necessary provisions. The contract shall also provide for the selection of trustees in a manner agreed to by the boards of commissioners and approved by the State Board of Community Colleges. The State Board of Community Colleges shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area."

**Sec. 2.** The contract for Mayland Community College adopted pursuant to G.S. 115D-59 prior to June 30, 1994, is cancelled effective June 30, 1994. Effective July 1, 1994, a new contract may be adopted for Mayland Community College in accordance with G.S. 115D-59, as amended by Section 1 of this act.

**Sec. 3.** This act applies only to Mayland Community College.

**Sec. 4.** Section 1 of this act becomes effective July 1, 1994. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

H.B. 1540

## CHAPTER 576

## AN ACT TO CREATE A SEPARATE CRAB LICENSE IN CHAPTER 113 OF THE GENERAL STATUTES AND TO ESTABLISH A TWO-YEAR MORATORIUM ON SPECIFIED FISHING LICENSES.

Whereas, in is the long-established policy of this State to preserve and protect its marine and estuarine resources for the use and benefit of all North Carolina citizens; and

Whereas, North Carolina's coastal fisheries resources have become stressed by factors which include: (i) overfishing; (ii) environmental

impacts, such as water pollution; (iii) loss of wetlands and other fisheries habitat; and (iv) disease; and

Whereas, fishing has been a source of livelihood for many of the State's coastal citizens during the past four centuries, and that North Carolina has a significant interest in preserving and protecting that historical and cultural heritage; and

Whereas, North Carolina's traditional commercial fishermen have been adversely impacted by a number of factors, which include: (i) the decline of fishery populations; (ii) the use of more gear due to that decline; (iii) increasing conflicts between resource users in different fisheries; and (iv) the economic impact of increased State and federal fisheries regulation; and

Whereas, it is in the best interest of the citizens of this State that North Carolina develop, protect, and manage its own fishery resources in lieu of federal regulation of those resources; and

Whereas, the historical method by which the State has established fisheries regulations has resulted in a largely piecemeal approach to proper fisheries management; and

Whereas, these factors make it necessary to establish a two-year moratorium on vessel licenses, endorsements to sell fish, shellfish licenses, and crab licenses in order to conduct a comprehensive study of the fishery industry including: reviewing available measures to control fishing effort, gathering vital fisheries information, conducting necessary scientific research, studying fisheries management measures taken by other states or resource management organizations (including national and international), and obtaining public comments; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 14 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-153.1. Crab license.

(a) Except as provided in subsection (d) of this section, it is unlawful for an individual to take crabs from the coastal fishing waters of North Carolina for commercial use by any means without having first procured an individual crab license.

(b) It is unlawful for any individual to take crabs for commercial use from the coastal fishing waters of North Carolina without having ready at hand for inspection a current and valid crab license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken crabs to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Individual crab licenses shall be issued annually on a fiscal year basis upon payment of a fee of seven dollars and fifty cents (\$7.50) for residents and one hundred dollars (\$100.00) for nonresidents. Vessel crab licenses shall be issued annually on a fiscal year basis upon payment of a fee of twenty-two dollars and fifty cents (\$22.50) and shall be issued in the name of the owner.

(d) The owner of a vessel licensed under G.S. 113-152 shall be eligible to purchase a vessel crab license for crabs under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons



serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The vessel crab license issued under this subsection shall be revoked when the owner or any other person using the owner's vessel is convicted of a violation under this section, except for subsection (b).

(e) In the event an individual possessing a crab license changes his name or address or receives one erroneous in this respect, he must within 30 days surrender the license for one bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(f) It is unlawful for an individual issued a crab license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a crab license from a source not authorized by the Marine Fisheries Commission."

Sec. 2. G.S. 113-154 reads as rewritten:

"§ 113-154. ~~Shellfish and crab licenses.~~ license.

(a) It is unlawful for an individual to take shellfish ~~or crabs~~ from the public or private grounds of North Carolina by mechanical means or for commercial use by any means without having first procured an individual shellfish ~~and crab~~ license.

(b) It is unlawful for any individual to take shellfish ~~or crabs~~ for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid shellfish ~~and crab~~ license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken shellfish ~~or crabs~~ to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Shellfish ~~and crab~~ licenses are issued annually on a fiscal year basis upon payment of a fee of ~~fifteen dollars (\$15.00)~~ seven dollars and fifty cents (\$7.50) upon proof that the license applicant is a resident of North Carolina; Provided, that persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's shellfish ~~and crab~~ license. ~~Notwithstanding G.S. 113-130, for purposes of this subsection, a North Carolina resident means a person that has resided in North Carolina for six months immediately preceding the application for the shellfish and crab license.~~

(d) In the event an individual possessing a shellfish ~~and crab~~ license changes his name or address or receives one erroneous in this respect, he must within 30 days surrender the license for one bearing the correct name and address. ~~An individual prosecuted for failure to possess a valid license is exonerated if he can show that the invalidity consisted solely of an incorrect name or address appearing in a license to which he was lawfully entitled and that the erroneous condition had not existed for longer than 30 days.~~ Upon a showing by the individual that the name or address change

occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(e) It is unlawful for an individual issued a shellfish ~~and crab~~ license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish ~~and crab~~ license from a source not authorized by the Marine Fisheries Commission."

**Sec. 3.** (a) Except as provided in subsections (b) or (c) of this section, the Department shall not issue any new licenses for a two-year period beginning July 1, 1994, and ending June 30, 1996, under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-153.1. Crab license.
- (3) G.S. 113-154. Shellfish license.
- (4) G.S. 113-154.1. Nonvessel endorsements to sell fish.

(b) Any resident who possesses a shellfish and crab license or nonresident who possesses a crab license on June 30, 1994, may apply for a crab license issued in accordance with G.S. 113-153.1.

(c) The Department may renew any license issued on or after July 1, 1993, under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-154. Oyster, scallop, and clam license (amended, effective January 1, 1994).
- (3) G.S. 113-154. Shellfish and crab license.
- (4) G.S. 113-154.1. Endorsement to sell fish.

(d) During the moratorium, there shall be an Appeals Panel to consider license applications for new licenses.

- (1) The Appeals Panel shall consist of the Fisheries Director, the Chairman of the Marine Fisheries Commission, and one other person selected by the Cochairs of the Joint Legislative Commission on Seafood and Aquaculture to review hardship or emergency license cases.
- (2) The Marine Fisheries Commission shall adopt temporary rules to govern the operation of the Appeals Panel. The Appeals Panel is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Appeals Panel shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes.
- (3) The Appeals Panel may grant a license if it finds that the denial of the license application would create an emergency or hardship on the individual or the State. In no event shall the Appeals Panel grant a license when the total number of licenses in the specific category would exceed the number of licenses in effect on June 30, 1994.
- (4) The Appeals Panel may grant an emergency temporary license due to death, illness, or incapacity, for a period not to exceed 30 days. Emergency temporary licenses shall be limited to vessel crab licenses authorized under G.S. 113-153.1(d).

(e) During the moratorium, the North Carolina Sea Grant College Program shall conduct an extensive study of the fishery industry including: gathering available information, conducting necessary scientific research, studying other states or resource management organizations (including national and international organizations), and obtaining public comments on recommendations. The North Carolina Sea Grant College Program shall study all issues relating to the fishery resource including, but not limited to:

- (1) Analysis of licensing limitations including the biological, social, and economic impact of seasonal, specific areas, or gear restrictions.
- (2) Comparison of licensing programs.
- (3) Classification and enumeration of user groups.
- (4) Development of management policies and plans for crabs, shellfish, and all other fishery resources.
- (5) Evaluation and development of an effective enforcement mechanism for the licensing program recommended by this study.
- (6) Any other issue relating to the fishery industry.

The North Carolina Sea Grant College Program shall work with the Steering Committee and shall report quarterly to the Joint Legislative Commission on Seafood and Aquaculture and the Marine Fisheries Commission beginning October 1, 1994.

(f) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall appoint individuals to a 19-member Steering Committee to oversee the study of the fishery resource comprised as follows:

- (1) Chair, Marine Fisheries Commission.
- (2) Director of the Marine Fisheries Division of the Department of Environment, Health, and Natural Resources (or designee).
- (3) Director of the North Carolina Sea Grant College Program (or designee).
- (4) The Cochairs of the Joint Legislative Commission on Seafood and Aquaculture (or designees).
- (5) Two representatives from the commercial fishing industry, one appointed by the President Pro Tempore of the Senate and the other appointed by the Speaker of the House of Representatives.
- (6) One representative from the North Carolina Fisheries Association Auxiliary, appointed by the Speaker of the House of Representatives.
- (7) Three representatives from the recreational fishing industry, one appointed by the Speaker of the House of Representatives and two persons appointed by the President Pro Tempore of the Senate.
- (8) One seafood processor, appointed by the President Pro Tempore of the Senate.
- (9) Two academic fisheries scientists, one appointed by the Speaker of the House of Representatives and the other appointed by the President Pro Tempore of the Senate.
- (10) One ecologist, appointed by the Speaker of the House of Representatives.
- (11) One social scientist, appointed by the President Pro Tempore of the Senate.

- (12) One economist, appointed by the Speaker of the House of Representatives.
- (13) One environmentalist, appointed by the President Pro Tempore of the Senate.
- (14) One representative from aquaculture, appointed by the Speaker of the House of Representatives.

The Chair of the Steering Committee shall be the Chair of the Marine Fisheries Commission.

**Sec. 4.** During the moratorium, the Marine Fisheries Commission shall be limited in the exercise of its existing authority to regulate and control the commercial and recreational harvest of marine fisheries resources to measures: (i) that prevent further endangerment of the resources; (ii) that involve user conflicts; or (iii) that are necessary to maintain State control of its own fishery resources in order to avoid the exercise of federal fishery management authority over those resources.

**Sec. 5.** The Joint Legislative Commission on Seafood and Aquaculture may report to the 1995 General Assembly, and shall report on the first day the 1996 Regular Session commences on its findings, together with any recommended legislation.

**Sec. 6.** Nothing herein contained shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. If funds are not appropriated for the 1994-95 fiscal year to implement the provisions of Sections 3, 4, or 5 of this act, Sections 3, 4, or 5 shall not become effective.

**Sec. 7.** This act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

H.B. 763

## CHAPTER 577

### AN ACT TO ALLOW PENDER COUNTY AND ITS MUNICIPALITIES TO SPECIFY BY INTERLOCAL AGREEMENT A REDISTRIBUTION OF LOCAL SALES TAX REVENUES NOT RESTRICTED BY LAW.

*The General Assembly of North Carolina enacts:*

**Section 1.** This section applies only if Pender County has provided under G.S. 105-472 that revenues are to be distributed under subdivision (1) of that section. Revenues collected under Articles 39, 40, and 42 of Chapter 105 of the General Statutes which are received by Pender County and the municipalities within that county under G.S. 105-472, which were initially allocated to Pender County under those Articles, other than revenues which are required by law to be used for certain purposes, may be redistributed among Pender County and those municipalities by agreement adopted under Article 20 of Chapter 160A of the General Statutes. The agreement is effective only if approved by Pender County and all the municipalities in that county entitled to a distribution of those funds for which Pender County determined the allocation method. An election to enter an agreement shall be made annually at the time the county makes its

determination to the Department of Revenue for the method of local sales tax distribution under G.S. 105-472.

**Sec. 2.** Chapter 901, Session Laws of 1989, is repealed.

**Sec. 3.** This act becomes effective on and after July 1, 1992.

In the General Assembly read three times and ratified this the 29th day of June, 1994.

H.B. 1727

### CHAPTER 578

#### AN ACT RELATING TO SERVICE OF COMPLAINTS AND ORDERS IN HOUSING CODE CASES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Complaints or orders issued by a public officer pursuant to Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes shall be served upon persons either personally or by registered or certified mail, and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing, service shall be deemed sufficient. The person mailing such complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be deemed conclusive in the absence of fraud.

**Sec. 2.** This act applies to the City of Greensboro only.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1994.

S.B. 725

### CHAPTER 579

#### AN ACT TO MODIFY THE PERCENTAGE OF SALES THAT MUST BE ATTRIBUTABLE TO FOOD AND NONALCOHOLIC BEVERAGES BY RESTAURANT PERMITTEES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 18B-1000(6) reads as rewritten:

"(6) Restaurant -- An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be ~~greater than its gross receipts from alcoholic beverages,~~ not less than forty percent (40%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1994.



S.B. 898

## CHAPTER 580

AN ACT TO PROVIDE THAT AN OWNER OF AN ON-SITE LAND CLEARING AND INERT DEBRIS LANDFILL DOES NOT HAVE TO OBTAIN A STATE PERMIT AND TO REGULATE SUCH LANDFILLS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 130A-294(a)(4) reads as rewritten:

"(4) Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. No permit shall be granted for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for such permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in. No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;".

Sec. 2. Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-301.1. Land clearing and inert debris landfills with a disposal area of 1/2 acre or less; recordation.

(a) No landfill for the on-site disposal of land clearing and inert debris shall, at the time the landfill is sited, be sited 50 feet or less from a boundary of an adjacent property.

(b) The owner of a landfill for the on-site disposal of land clearing and inert debris shall file a certified copy of a survey of the property on which the landfill is located in the register of deeds' office in the county in which the property is located, which survey shall accurately show the location of the landfill and the record owner of the land on which the landfill is situated.

(c) Prior to the lease or conveyance of any lot or tract of land which directly abuts or is contiguous to the disposal area used for land clearing and inert debris, the owner of the lot or tract shall prepare a document disclosing that a portion of the property has been used as a disposal area for land clearing and inert debris or has been used to meet applicable minimum buffer requirements. The disclosure shall include a legal description of the property that would be sufficient in an instrument of conveyance and shall be filed in the register of deeds office prior to any lease or conveyance.

(d) No public, commercial, or residential building shall be located or constructed on the property, or any portion of the property on which the landfill for the on-site disposal of land clearing and inert debris is located, 50 feet or less from the landfill. Construction of such buildings, with the exception of site preparation and foundation work, shall not commence until after closure of the on-site land clearing and inert debris landfill.

(e) Source reduction methods including, but not limited to, chipping and mulching of land clearing and inert debris shall be utilized to the maximum degree technically and economically feasible.

(f) The Department of Transportation is exempt from subsections (b) and (c) of this section for the on-site disposal of land clearing and inert debris on highway rights-of-way."

**Sec. 3.** Rules adopted by the Commission prior to the effective date of this act concerning siting and operational requirements shall remain in effect to the extent that the rules are consistent with this act.

**Sec. 4.** This act is effective upon ratification and applies to all land clearing and inert debris landfills sited on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1964

## CHAPTER 581

AN ACT TO AMEND CHAPTER 1073 OF THE 1959 SESSION LAWS TO PROVIDE THAT THE SHERIFF ISSUE TYRRELL COUNTY WEAPON PERMITS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 1073 of the 1959 Session Laws, as further amended, is amended in Section 4 by deleting the phrase "Tyrrell,".

**Sec. 2.** Article 52A of Chapter 14 of the General Statutes shall apply to Tyrrell County.

**Sec. 3.** This act is effective upon ratification and applies to applications for permits filed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

AN ACT TO REDUCE THE TIME ALLOWED THE DEPARTMENT OF REVENUE TO MAKE ASSESSMENTS OF TAXES FOLLOWING A FEDERAL DETERMINATION, TO REINSTATE AN INADVERTENTLY DELETED PROVISION RELATING TO ASSESSMENTS FOR EMPLOYER WITHHOLDING BASED ON FEDERAL DETERMINATIONS, AND TO CLARIFY THE ASSESSMENT STATUTES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-159 reads as rewritten:

"§ 105-159. ~~Corrections and changes.~~ Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within two years after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. If the amount of the taxable income for any year of any taxpayer under this Division, as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States of competent authority, the taxpayer, within two years after receipt of the internal revenue agent's report or supplemental report reflecting the corrected or determined taxable income shall make return under oath or affirmation to the Secretary of the corrected, changed, or determined taxable income. In making an assessment or refund under this section, the Secretary shall consider all evidence brought to his attention, whether or not it was considered in the federal assessment or correction. If the taxpayer fails to notify the Secretary that the taxpayer's taxable income for any year as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined for federal income tax purposes, the statute of limitations shall not apply to assessments under this section. The Secretary shall proceed to determine from such all available evidence as may have been brought to his attention the correct North Carolina taxable income of the taxpayer for the taxable year, and if there is any additional tax due from the taxpayer it shall be assessed and collected; and if the taxpayer's correct tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. there has been an overpayment of the tax the Secretary shall, within 30 days after the final determination of the North Carolina taxable income of the taxpayer, refund the amount of the excess: Provided, that any A taxpayer who fails to comply with this section within the time specified shall be is subject to all the penalties as provided in G.S. 105-236, in case of additional tax due, and

shall forfeit in G.S. 105-236 and forfeits the right to any refund due by reason of the ~~change, determination.~~

~~When the taxpayer makes the return reflecting the corrected taxable income as required by this section, the Secretary shall make assessments or refunds based thereon within three years after the date the return required by this section is filed and not thereafter. When the taxpayer does not make the return reflecting the corrected taxable income as required by this section but the Department receives from the United States government or one of its agents a report reflecting corrected taxable income, the Secretary shall make assessments for taxes due based on the corrected taxable income within five years after the date the report from the United States government or its agent is actually received and not thereafter.~~

~~Nothing in this section prevents the Secretary from making an assessment immediately following the receipt from any source of information concerning the correction, change in, or determination of taxable income of a taxpayer by the United States government. The assessment of tax or additional tax under this section shall not be subject to any statute of limitations except as provided in this section."~~

Sec. 2. G.S. 105-130.20 reads as rewritten:

~~"§ 105-130.20. Corrections and changes. Federal corrections.~~

~~If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within two years after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. (a) If the amount of the taxable income for any year of any corporation subject to taxation under this Division, as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States of competent authority, such taxpayer, within two years after receipt of a final determination reflecting the changed, corrected or determined taxable income shall make return under oath or affirmation to the Secretary of Revenue of such taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the income year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.~~

~~The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. of Revenue shall thereupon proceed to determine, from such facts or evidence as he may have brought to his attention or shall otherwise acquire, whether or not the same were considered or taken into account in the federal determination, the correct tax liability of such corporation for the year. If there shall be any additional tax due from such corporation, the same shall be assessed and collected; and if there shall have been an overpayment of the tax, the Secretary shall, within 30 days after the final determination of the tax liability, refund the amount of such overpayment. (b) Any corporation which A taxpayer that fails to comply with this section as to making return of~~



~~federally determined taxable income within the time specified shall be is subject to all the penalties provided in G.S. 105-236, in the case of additional tax due, and shall forfeit in G.S. 105-236 and forfeits its rights to any refund due by reason of federal changes, the determination.~~

~~(c) When the corporation makes the return of federally determined taxable income the Secretary of Revenue shall make assessments or refunds based thereon within three years from the date the return required by this section is filed and not thereafter. If the corporation fails to make such return, no statute of limitations shall apply: Provided, that if the Department of Revenue receives from the United States government or any of its agents a report reflecting such federally determined taxable income, the Secretary of Revenue shall make assessment for taxes due based on such taxable income within five years from the date the report from the United States government or its agent is actually received and not thereafter. The assessment of tax or additional tax under this section shall not be subject to any statute of limitations except as provided in this section.~~

~~(d) Nothing in this section shall be construed as preventing the Secretary of Revenue from making an assessment immediately following the receipt from any source of information concerning the correction, change in, or determination of net income of a taxpayer by the United States government."~~

Sec. 3. G.S. 105-160.8 reads as rewritten:

"§ 105-160.8. Corrections and changes. Federal corrections.

For purposes of this Division, the provisions of G.S. 105-159 requiring an individual to report ~~changes, corrections, or the the correction or~~ determination of net taxable income by the ~~Internal Revenue Service shall~~ federal government apply to fiduciaries required to file returns for estates and trusts."

Sec. 4. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-163.6A. Federal corrections.

If the amount of taxes an employer is required to withhold and pay under the Code is corrected or otherwise determined by the federal government, the employer must, within two years after being notified of the correction or final determination by the federal government, file a return with the Secretary reflecting the corrected or determined amount. The Secretary shall determine from all available evidence the correct amount the employer should have paid under this Article for the period covered by the federal determination. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the employer as provided in Article 9 of this Chapter. If there has been an overpayment of the tax, the Secretary shall either refund the overpayment to the employer in accordance with G.S. 105-163.9 or credit the amount of the overpayment to the individual in accordance with G.S. 105-163.10. An employer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the



determination. Failure of an employer to comply with this section does not, however, affect an individual's right to a credit under G.S. 105-163.10."

Sec. 5. G.S. 105-241.1 reads as rewritten:

"§ 105-241.1. *Additional taxes; assessment procedure.*

(a) If the Secretary of Revenue discovers from the examination of any return or otherwise that any tax or additional tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a hearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Secretary is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) Delivery of Notice. -- The Secretary shall deliver the notice of a proposed assessment to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations in subsection (c) apply as if the notice had been delivered on the date the taxpayer makes the affidavit.  
~~The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Secretary or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed, in which event the taxpayer shall be heard by the Secretary in all respects as if he had made timely application.~~

(c) Any taxpayer who objects to a proposed assessment of tax or additional tax shall be entitled to a hearing before the Secretary of Revenue provided application therefor is made in writing within 30 days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Secretary of Revenue shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of tax or additional tax due from the taxpayer as finally determined by the Secretary shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Secretary at any time within 30 days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have 30 days after the receipt of the same from the Secretary of Revenue to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(d) If no timely application for a hearing is made within 30 days after notice of a proposed assessment of tax or additional tax is given pursuant to subsection (a), such proposed tax or additional tax assessment shall become final without further notice and shall be immediately due and collectible.

(e) Statute of Limitations. -- The Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax. If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary must assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later. If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver.

Where a proper application for a license or a return has been filed and in the absence of fraud, the Secretary of Revenue shall assess any tax or additional tax due from a taxpayer within three years after the date upon which such application or return is filed or within three years after the date upon which such application or return was required by law to be filed, whichever is the later. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary shall assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

Provided, the taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or indefinite time, and if such waiver is accepted by the Secretary he may institute assessment procedures at any time within the time extended by such waiver. This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.

(f) Except as hereinafter provided in subsection (g), the Secretary of Revenue shall have no authority to assess any tax or additional tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Secretary's decision has been given to the taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Secretary of Revenue shall have authority at any time within the applicable period of limitations to proceed at once to assess any tax or additional tax which he finds is due from a taxpayer if, in his opinion, the collection of such tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within 30 days after the date of such assessment.

(h) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.

(i) Interest. -- All assessments of ~~taxes or additional taxes, tax,~~ exclusive of penalties assessed ~~thereon, on the tax,~~ shall bear interest at the rate established pursuant to this subsection from the time the ~~taxes or additional taxes were tax~~ was due until paid. On or before June 1 and December 1 of each year, the Secretary of Revenue shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Internal Revenue Code. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year. ~~For refunds and assessments made between July 1, 1982, and December 31, 1982, the rate shall be twelve percent (12%) per year.~~

~~From and after January 1, 1978, interest upon assessments and upon additional taxes shall be computed at the rate established by G.S. 105-241.1(i) and shall be computed without regard to any former rate of interest which might have been established by G.S. 105-241.1 for the taxable period for which said assessment was made, or for the period within which said taxes were due to be paid.~~

(ii) 'Tax' and 'additional tax,' for the purposes of this Subchapter and for the purposes of Subchapters V and VIII of this Chapter, include penalties and interest, as well as the principal amount of such tax or additional tax.

(j) Construction. -- This section is in addition to and not in substitution of any other provision of the General Statutes relative to the assessment and

collection of ~~taxes, taxes and shall not be construed as repealing any other provision of the General Statutes.~~"

Sec. 6. G.S. 105-197.1 reads as rewritten:

"§ 105-197.1. ~~Corrections and changes.~~ Federal corrections.

If the amount of a taxpayer's net gifts is corrected or otherwise determined by the federal government, the taxpayer must, within two years after being notified of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined net gifts. If the amount of the net gifts of any taxpayer for any year, subject to the provisions of this Article and as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States having authority to do so, such taxpayer, within 30 days after receipt of any Internal Revenue agent's report or supplemental report reflecting the corrected or determined net gifts shall make return under oath or affirmation to the Secretary of Revenue of such corrected, changed or determined net gifts. In making any assessment or refund under this section, the Secretary shall consider all facts or evidence brought to his attention, whether or not the same were considered or taken into account in the federal assessment or correction. If the taxpayer fails to notify the Secretary of Revenue of assessment of additional tax by the Commissioner of Internal Revenue, the statute of limitations shall not apply. The Secretary of Revenue shall thereupon proceed to determine, from such evidence as he may have brought to his attention or shall otherwise acquire, determine from all available evidence the taxpayer's correct net gifts of such taxpayer for the calendar year, and if there shall be any additional tax due from such taxpayer the same shall be assessed and collected; and if there shall have been an overpayment of the tax the said Secretary shall, within 30 days after the final determination of the net gifts of such taxpayer, refund the amount of such excess: Provided, that any tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section as to making report of such change as made by the federal government within the time specified shall be is subject to all the penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit his rights in G.S. 105-236 and forfeits the right to any refund due by reason of such change, the determination.

When the taxpayer makes the return reflecting the corrected net gifts as required by this section, the Secretary of Revenue shall make assessments or refunds based thereon within three years from the date the return required by this section is filed, and not thereafter. When the taxpayer does not make the return reflecting the corrected net gifts as required by this section but the Department of Revenue receives from the United States government or one of its agents a report reflecting such corrected net gifts, the Secretary of



~~Revenue shall make assessments for taxes due based on such corrected net gifts within five years from the date the report from the United States government or its agent is actually received, and not thereafter.~~

~~Nothing in this section shall be construed as preventing the Secretary of Revenue from making an assessment immediately following the receipt from any source of information concerning the correcting, change in, or determination of net gifts of a taxpayer by the United States government. The assessment of tax or additional tax under this section shall not be subject to any statute of limitations except as provided in this section."~~

Sec. 7. This act becomes effective January 1, 1995, and applies to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1838

## CHAPTER 583

AN ACT TO PROVIDE FOR THE NONPARTISAN ELECTION OF THE ONSLOW COUNTY BOARD OF EDUCATION, SUBJECT TO A REFERENDUM, AND PROVIDING THAT WHEN VACANCIES ARE TO BE FILLED ON THE CABARRUS COUNTY BOARD OF EDUCATION BY ELECTION FOR THE REMAINDER OF THE UNEXPIRED TERM, THE ELECTION SHALL BE HELD TOGETHER WITH THOSE FOR THE FULL TERM.

*The General Assembly of North Carolina enacts:*

Section 1. (a) Beginning in 1996 the members of the Onslow County Board of Education shall be elected on a nonpartisan basis at the time of the primary election for county officers. The elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. The results of the election shall be determined by the plurality method under G.S. 163-292. Vacancies on the Board of Education for positions elected on a nonpartisan basis shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis in 1992 or 1994 shall be filled in accordance with G.S. 115C-37.1. This section does not affect the terms of office of any person elected in 1992 or 1994 to the Onslow County Board of Education. Beginning in 2000, members elected shall take office and qualify on July 1 of the year of their election, and the terms of their predecessors shall expire at that same time.

(b) All laws and clauses of laws in conflict with this act, including Chapter 630 of the 1967 Session Laws, Chapter 2 of the 1969 Session Laws, Chapter 525 of the 1977 Session Laws, and Chapter 287 of the 1985 Session Laws are repealed to the extent of the conflict.

Sec. 2. The Onslow County Board of Elections shall conduct an election on November 8, 1994, on the question of approval of Section 1 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST



Election of the Onslow County Board of Education on a nonpartisan basis."

If a majority of the votes cast are FOR the question, then Section 1 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 1 of this act does not become effective.

**Sec. 2.1.** Chapter 102 of the 1989 Session Laws is amended by adding a new section to read:

"Sec. 3.1. When an election is to be held to fill a vacancy for the remainder of the unexpired term, and the election is at the same time as for full terms, the elections shall be held together on the same ballot. The candidates receiving the highest numbers of votes equal to the number of full terms to be filled are elected to full terms, and the candidates receiving the next highest numbers of votes equal to the number of unexpired terms to be filled are elected to the remainder of the unexpired terms."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

S.B. 1045

## CHAPTER 584

AN ACT TO BROADEN EXISTING INCOME TAX CREDITS FOR THE PRODUCTION AND INSTALLATION OF SOLAR AND PHOTOVOLTAIC EQUIPMENT BY INCREASING THE AMOUNTS OF THE CREDITS AND EXTENDING THE SOLAR EQUIPMENT CREDITS TO INCLUDE EQUIPMENT THAT GENERATES ELECTRICITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-130.23 reads as rewritten:

"§ 105-130.23. Credit against corporate income tax for solar hot water, heating and cooling energy equipment in residential buildings.

(a) Any corporation ~~which that~~ causes to be constructed or installed solar ~~hot water, heating or cooling equipment in buildings to include energy~~ equipment for water heating, space heating or cooling, or electricity in residential buildings used or sold by the corporation for commercial or business purposes in North Carolina ~~shall be~~ is allowed as a credit against the taxes imposed by this Division, ~~an amount~~ Division equal to ~~twenty-five percent (25%)~~ forty percent (40%) of the installation and equipment cost of the solar ~~hot water, heating or cooling equipment; provided, that energy~~ equipment. A credit allowed under this section shall not exceed one thousand five hundred dollars ~~(\$1,000)~~ (\$1,500) per system or per year for any single building or each family dwelling unit of a multi-dwelling building ~~which that~~ is individually metered for electric power or natural gas or ~~with~~ has a separate furnace for oil heat paid for by the ~~occupant; provided further, that to~~ occupant. To obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building constructed or modified for sale in which a solar ~~system energy equipment~~ is constructed or installed, the credit ~~shall be~~ is allowed to the owner who first occupies the building for use after the

construction or installation of the system equipment or the owner-lessor who first leases the building for use after the construction or installation of the system; ~~provided, further, that the equipment.~~ The credit shall not be allowed to the extent that any of the cost of the system equipment was provided by federal, State, or local grants; ~~and provided further, that if grants.~~ If the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits ~~allowed by the provisions of this Division, such excess allowed, except payments of tax made by or on behalf of the taxpayer, the excess shall be allowed against the taxes imposed by this Division for the next three five succeeding years.~~

(b) For the purpose of this section, the term 'solar hot water, heating and cooling equipment' energy equipment for water heating, space heating or cooling, or electricity means any ~~hot water, heating, cooling, or heating and cooling equipment which~~ solar energy equipment for water heating, space heating or cooling, or electricity that meets the definitive performance criteria established by the U.S. Secretary of the Treasury or any other performance criteria approved and published by the Secretary of Revenue, or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue, Secretary."

Sec. 2. G.S. 105-130.28 reads as rewritten:

"§ 105-130.28. Credit against corporate income tax for construction of a photovoltaic equipment facility.

(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment ~~shall be~~ is allowed a credit against the tax imposed by this Division equal to ~~twenty percent (20%) twenty-five percent (25%)~~ of the installation and equipment costs of construction. This credit shall not be allowed to the extent that any of the costs of the system equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, 'photovoltaic equipment' means those products designed, manufactured, and produced to convert sunlight directly into ~~electricity without a need for additional generating or conversion equipment.~~ electricity.

(c) The amount of credit allowed under this section may be carried over for the next succeeding five years."

Sec. 3. G.S. 105-130.32 reads as rewritten:

"§ 105-130.32. Credit against corporate income tax for installation of solar energy equipment for the production of industrial or process heat, heat or electricity in certain processes.

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State ~~shall be~~ is allowed a credit against the tax imposed by this Division equal to ~~twenty percent (20%) thirty-five percent (35%)~~ of the installation and equipment costs of the solar energy equipment. The credit allowed under this section may not exceed

~~eight~~ twenty-five thousand dollars ~~(\$8,000)~~ (\$25,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the ~~system~~ equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, 'solar energy equipment' means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Sec. 4. G.S. 105-151.2 reads as rewritten:

*"§ 105-151.2. Credit for solar ~~hot water, heating, and cooling~~ energy equipment.*

(a) A person or partnership who causes to be constructed or installed a solar ~~hot water, heating, or cooling system~~ energy equipment for water heating, space heating or cooling, or electricity in any building in North Carolina ~~shall be~~ is allowed as a credit against the tax imposed by this Division ~~an amount equal to twenty-five percent (25%)~~ forty percent (40%) of the installation and equipment cost of the solar ~~hot water, heating, or cooling equipment; provided, that the~~ energy equipment. A credit allowed under this section ~~may~~ shall not exceed one thousand five hundred dollars ~~(\$1,000)~~ (\$1,500) per system or per year on any single building or for each family dwelling unit of a multi-dwelling building ~~which that~~ is individually metered for electric power or natural gas or ~~with~~ has a separate furnace for oil heat paid for by the occupant; provided further, that to occupant. To obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building constructed or modified for sale in which a solar ~~system~~ energy equipment is constructed or installed, the credit shall be allowed to the owner who first occupies the building for use after the construction or installation of the ~~system~~ equipment or the owner-lessor who first leases the building for use after the construction or installation of the ~~system; provided further, that the~~ equipment. The credit shall not be allowed to the extent that any of the cost of the ~~system~~ equipment was provided by federal, State, or local ~~grants; and provided further, that if~~ grants. If the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits ~~allowed by the provisions of this Division, allowed, except payments of tax made by or on behalf of the taxpayer,~~ the excess shall be allowed against the taxes imposed by this Division for the next ~~three~~ five succeeding years.

(b) In the case of property owned by the entirety, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(c) For the purpose of this section, the term 'solar ~~hot water, heating, and cooling equipment~~ energy equipment for water heating, space heating or cooling, or electricity' means any ~~hot water, heating, cooling, or heating~~

~~and cooling equipment which solar energy equipment for water heating, space heating or cooling, or electricity that meets the definitive performance criteria established by the U.S. Secretary of the Treasury or any other performance criteria approved and published by the Secretary of Revenue, or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue. Secretary."~~

Sec. 5. G.S. 105-151.8 reads as rewritten:

"§ 105-151.8. Credit for installation of solar energy equipment for the production of ~~industrial or process heat~~ heat or electricity in certain processes.

(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of ~~his the person's~~ business located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this Division ~~an amount equal to twenty percent (20%)~~ thirty-five percent (35%) of the installation and equipment costs of the solar energy equipment. The credit allowed under this section may not exceed ~~eight~~ twenty-five thousand dollars (~~\$8,000~~) (\$25,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the ~~system~~ equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except ~~payment~~ payments of tax made by or on behalf of the taxpayer. In no case shall a tax credit be allowed under both this section and G.S. 105-151.2.

(b) In the case of property owned by the entirety, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(c) As used in this section, 'solar energy equipment' means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Sec. 6. This act is effective for taxable years beginning on or after January 1, 1994.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1633

## CHAPTER 585

### AN ACT TO PROHIBIT THE RUNNING OF DEER BY DOGS IN THE TOWNS OF KITTY HAWK AND NAGS HEAD.

*The General Assembly of North Carolina enacts:*

**Section 1.** Notwithstanding any other provision of law, it is unlawful to chase deer with dogs, or to permit a dog or dogs to run or chase deer at any time.

**Sec. 2.** Violation of this act is a Class 3 misdemeanor. A second or subsequent violation is punishable as a Class 2 misdemeanor.



**Sec. 3.** This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

**Sec. 4.** This act applies only to the Towns of Kitty Hawk and Nags Head.

**Sec. 5.** This act becomes effective October 1, 1994.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1880

## CHAPTER 586

**AN ACT TO ALLOW THE TOWN OF BEECH MOUNTAIN TO  
INSTALL SEWER LINES WITH ITS OWN CREW AND  
EQUIPMENT.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 143-135 reads as rewritten:

"§ 143-135. *Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~seventy-five thousand dollars (\$75,000)~~ two hundred twenty-five thousand dollars (\$225,000). Such force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

**Sec. 2.** This act applies to the Town of Beech Mountain only.

**Sec. 3.** This act applies only to the Bear Branch Sewer Outfall Project, Phase II.

and expires December 31, 1996.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1955

## CHAPTER 587

**AN ACT CONCERNING ZONING CLASSIFICATIONS IN THE CITY  
OF WINSTON-SALEM AND FORSYTH COUNTY.**



*The General Assembly of North Carolina enacts:*

**Section 1.** Section 23 of Chapter 677 of the 1947 Session Laws, as amended by Section 1(d) of Chapter 777 of the 1953 Session Laws and Section 1 of Chapter 381 of the 1973 Session Laws, reads as rewritten:

"Sec. 23. Zoning. The city and the county may jointly or separately confer upon the joint City and County Planning Board the authority and the duty of recommending revisions of existing zoning ordinances or preparing new zoning ordinances or resolutions for the city or county or any portion thereof, in accordance with the present zoning ordinance of the City of Winston-Salem and any amendments thereto and in accordance with the authority for county zoning as herein authorized.

The Board of Aldermen of the City of Winston-Salem is hereby empowered, in accordance with the conditions and procedure specified in this act, by ordinance to regulate in any portion or portions of the City of Winston-Salem the uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, water supply conservation, soil conservation, forestry or other purposes.—

For any or all these purposes, the City may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this section; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts; provided, however, that the City may provide for the creation of special use districts in addition to general use districts.

It is the purpose and intent of this section to permit Winston-Salem to create general use districts in which a variety of uses are permitted, and to also create special use districts in which a single use is permitted upon the issuance by the Board of Aldermen of a special use permit prescribing the conditions under which such use will be permitted.

A person petitioning for rezoning of a tract of land, where special use districts are authorized by ordinance, may elect to request general use district zoning for said tract, or he may elect to request special use district zoning for said tract.

If he elects to petition for general use district zoning, he may not refer, either in his petition or at any hearings related to the petition, to the use intended for the property upon rezoning. The Board of Aldermen may not consider the intended use in determining whether to approve or disapprove the petition, but shall consider the full range of uses permitted within the requested general use district. If the petition is approved, the re-zoned property may be used for any of the uses permitted in the applicable general use district.

If the petitioner elects to petition for special use district zoning, the petition must specify the actual use intended for the property specified in the petition, and the intended use must be one permitted in the corresponding general use district. If the petition is for special use district zoning, the Board of Aldermen is to approve or disapprove the petition on the basis of

the specific use requested. If the petition is approved, the Board of Aldermen shall issue a special use permit authorizing the requested use with such reasonable conditions as the Board of Aldermen determines to be desirable in promoting public health, safety and general welfare.

The conditions contained in a special use permit issued by the Board of Aldermen may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the petitioner may propose and the Board of Aldermen may find appropriate, but not to include architectural review or controls. With approval of the petitioner, the conditions may include that upon the occurrence or nonoccurrence of a specified event or events, including a stated time period or time lapse, the property automatically reverts to its immediately preceding zoning classification without further notice, proceedings, hearings, or Board action.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and insure that substantial justice be done.

For the purpose of promoting the health, safety, morals and the general welfare of the City of Winston-Salem and its inhabitants, and in order to give full effect to the zoning ordinance of the City of Winston-Salem, as amended from time to time, said zoning ordinance, together with the zone map, and any amendments thereto hereafter adopted, shall operate and have effect within three miles of the corporate limits of the City of Winston-Salem, as now or hereafter established. The Board of Aldermen of the City of Winston-Salem may adopt ordinances from time to time zoning and rezoning all or so much of said three mile area as, within the judgment of the board, should be brought under the operation and effect of the city zoning ordinance. The board of adjustment and the administrative officer, within said three mile area, shall have and may exercise all the powers and duties now or hereafter conferred upon them by the zoning ordinance of the City of Winston-Salem.

The extension of said zoning ordinance to said three mile area and the ordinance adopted by the Board of Aldermen of the City of Winston-Salem from time to time shall conform with the general development plan for this area, if and when promulgated by either of the planning boards herein created.

Wherever in this Act the City Planning Board or the Board of Aldermen of the City of Winston-Salem or the Board of Adjustment of the City of Winston-Salem are given authority in the territory outside of the corporate limits of the City of Winston-Salem, the exercise of such authority beyond one mile from the corporate limits of the City of Winston-Salem shall be subject to the approval of the Board of Commissioners of Forsyth County."

**Sec. 2.** Section 25 of Chapter 677 of the 1947 Session Laws, as amended by Section 2 of Chapter 381 of the 1973 Session Laws, reads as rewritten:

"Sec. 25. Grant of Power. The Board of Commissioners for the County of Forsyth is hereby empowered, in accordance with the conditions and procedure specified in the subsequent Sections of this Act, by resolution to regulate in any portion or portions of Forsyth County which lie outside of the zoning jurisdiction of incorporated cities and towns, the location, height, bulk, and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, water supply conservation, soil conservation, forestry or other purposes.

For any or all these purposes, the County may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this section; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts; provided, however, that the County may provide for the creation of special use districts in addition to general use districts.

It is the purpose and intent of this section to permit Forsyth County to create general use districts in which a variety of uses are permitted, and to also create special use districts in which a single use is permitted upon the issuance by the Board of County Commissioners of a special use permit prescribing the conditions under which such use will be permitted.

A person petitioning for rezoning of a tract of land, where special use districts are authorized by ordinance, may elect to request general use district zoning for said tract, or he may elect to request special use district zoning for said tract.

If he elects to petition for general use district zoning, he may not refer, either in his petition or at any hearings related to the petition, to the use intended for the property upon rezoning. The Board of County Commissioners may not consider the intended use in determining whether to approve or disapprove the petition, but shall consider the full range of uses permitted within the requested general use district. If the petition is approved, the re-zoned property may be used for any of the uses permitted in the applicable general use district.

If the petitioner elects to petition for special use district zoning, the petition must specify the actual use intended for the property specified in the petition, and the intended use must be one permitted in the corresponding general use district. If the petition is for special use district zoning, the Board of County Commissioners is to approve or disapprove the petition on the basis of the specific use requested. If the petition is approved, the Board shall issue a special use permit authorizing the requested use with such reasonable conditions as the Board determines to be desirable in promoting public health, safety and general welfare.

The conditions contained in a special use permit issued by the Board may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking

lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the petitioner may propose and the Board may find appropriate, but not to include architectural review or controls. With approval of the petitioner, the conditions may include that upon the occurrence or nonoccurrence of a specified event or events, including a stated time period or time lapse, the property automatically reverts to its immediately preceding zoning classification without further notice, proceedings, hearings, or Board action.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and insure that substantial justice be done."

**Sec. 3.** This act shall apply only to the City of Winston-Salem and Forsyth County.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1956

## CHAPTER 588

## AN ACT CONCERNING ZONING BY THE CITY OF WINSTON-SALEM AND FORSYTH COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 23 of Chapter 677 of the 1947 Session Laws, as amended by Section 1(d) of Chapter 777 of the 1953 Session Laws and Section 1 of Chapter 381 of the 1973 Session Laws reads as rewritten:

"Sec. 23. Zoning. The city and the county may jointly or separately confer upon the joint City and County Planning Board the authority and the duty of recommending revisions of existing zoning ordinances or preparing new zoning ordinances or resolutions for the city or county or any portion thereof, in accordance with the present zoning ordinance of the City of Winston-Salem and any amendments thereto and in accordance with the authority for county zoning as herein authorized.

The Board of Aldermen of the City of Winston-Salem is hereby empowered, in accordance with the conditions and procedure specified in this act, by ordinance to regulate in any portion or portions of the City of Winston-Salem the uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, water supply conservation, soil conservation, forestry or other purposes.

For the purpose of increasing the availability of housing for persons of low or moderate income, and thereby promoting the public safety and welfare, the City may by ordinance provide a density bonus or other incentives of equivalent financial value to a developer of housing if that developer agrees to construct multifamily residential units or single family residential units for rent or sale to persons of low or moderate income, or to donate land to the City or the City of Winston-Salem Housing Authority to



be used for the purpose of the development of housing for persons of low or moderate income, in the manner, and in accordance with the standards, requirements, and regulations specified therein. For the purposes of this paragraph, 'density bonus' means a density increase over the otherwise maximum allowable residential density under the applicable zoning classification.

For any or all these purposes, the City may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this section; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land-land; those regulations may also provide for density bonuses or other financial incentives to developers as specified hereinabove. All regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts; provided, however, that the City may provide for the creation of special use districts in addition to general use districts.

It is the purpose and intent of this section to permit Winston-Salem to create general use districts in which a variety of uses are permitted, and to also create special use districts in which a single use is permitted upon the issuance by the Board of Aldermen of a special use permit prescribing the conditions under which such use will be permitted.

A person petitioning for rezoning of a tract of land, where special use districts are authorized by ordinance, may elect to request general use district zoning for said tract, or he may elect to request special use district zoning for said tract.

If he elects to petition for general use district zoning, he may not refer, either in his petition or at any hearings related to the petition, to the use intended for the property upon rezoning. The Board of Aldermen may not consider the intended use in determining whether to approve or disapprove the petition, but shall consider the full range of uses permitted within the requested general use district. If the petition is approved, the re-zoned property may be used for any of the uses permitted in the applicable general use district.

If the petitioner elects to petition for special use district zoning, the petition must specify the actual use intended for the property specified in the petition, and the intended use must be one permitted in the corresponding general use district. If the petition is for special use district zoning, the Board of Aldermen is to approve or disapprove the petition on the basis of the specific use requested. If the petition is approved, the Board of Aldermen shall issue a special use permit authorizing the requested use with such reasonable conditions as the Board of Aldermen determines to be desirable in promoting public health, safety and general welfare.

The conditions contained in a special use permit issued by the Board of Aldermen may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such



other matters as the petitioner may propose and the Board of Aldermen may find appropriate, but not to include architectural review or controls.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and insure that substantial justice be done.

For the purpose of promoting the health, safety, morals and the general welfare of the City of Winston-Salem and its inhabitants, and in order to give full effect to the zoning ordinance of the City of Winston-Salem, as amended from time to time, said zoning ordinance, together with the zone map, and any amendments thereto hereafter adopted, shall operate and have effect within three miles of the corporate limits of the City of Winston-Salem, as now or hereafter established. The Board of Aldermen of the City of Winston-Salem may adopt ordinances from time to time zoning and rezoning all or so much of said three mile area as, within the judgment of the board, should be brought under the operation and effect of the city zoning ordinance. The board of adjustment and the administrative officer, within said three mile area, shall have and may exercise all the powers and duties now or hereafter conferred upon them by the zoning ordinance of the City of Winston-Salem.

The extension of said zoning ordinance to said three mile area and the ordinance adopted by the Board of Aldermen of the City of Winston-Salem from time to time shall conform with the general development plan for this area, if and when promulgated by either of the planning boards herein created.

Wherever in this Act the City Planning Board or the Board of Aldermen of the City of Winston-Salem or the Board of Adjustment of the City of Winston-Salem are given authority in the territory outside of the corporate limits of the City of Winston-Salem, the exercise of such authority beyond one mile from the corporate limits of the City of Winston-Salem shall be subject to the approval of the Board of Commissioners of Forsyth County."

Sec. 2. Section 25 of Chapter 677 of the 1947 Session Laws, as amended by Section 2 of Chapter 381 of the 1973 Session Laws reads as rewritten:

"Sec. 25. Grant of Power. The Board of Commissioners for the County of Forsyth is hereby empowered, in accordance with the conditions and procedure specified in the subsequent Sections of this Act, by resolution to regulate in any portion or portions of Forsyth County which lie outside of the zoning jurisdiction of incorporated cities and towns, the location, height, bulk, and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, water supply conservation, soil conservation, forestry or other purposes.

For the purpose of increasing the availability of housing for persons of low or moderate income, and thereby promoting the public safety and welfare, the County may by ordinance provide a density bonus or other incentives of equivalent financial value to a developer of housing if that

developer agrees to construct multifamily residential units or single family residential units for rent or sale to persons of low or moderate income, or to donate land to the County or the City of Winston-Salem Housing Authority to be used for the purpose of the development of housing for persons of low or moderate income, in the manner, and in accordance with the standards, requirements, and regulations specified therein. For the purposes of this paragraph, 'density bonus' means a density increase over the otherwise maximum allowable residential density under the applicable zoning classification.

For any or all these purposes, the County may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this section; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land; those regulations may also provide for density bonuses or other financial incentives to developers as specified hereinabove. All regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts; provided, however, that the County may provide for the creation of special use districts in addition to general use districts.

It is the purpose and intent of this section to permit Forsyth County to create general use districts in which a variety of uses are permitted, and to also create special use districts in which a single use is permitted upon the issuance by the Board of County Commissioners of a special use permit prescribing the conditions under which such use will be permitted.

A person petitioning for rezoning of a tract of land, where special use districts are authorized by ordinance, may elect to request general use district zoning for said tract, or he may elect to request special use district zoning for said tract.

If he elects to petition for general use district zoning, he may not refer, either in his petition or at any hearings related to the petition, to the use intended for the property upon rezoning. The Board of County Commissioners may not consider the intended use in determining whether to approve or disapprove the petition, but shall consider the full range of uses permitted within the requested general use district. If the petition is approved, the re-zoned property may be used for any of the uses permitted in the applicable general use district.

If the petitioner elects to petition for special use district zoning, the petition must specify the actual use intended for the property specified in the petition, and the intended use must be one permitted in the corresponding general use district. If the petition is for special use district zoning, the Board of County Commissioners is to approve or disapprove the petition on the basis of the specific use requested. If the petition is approved, the Board shall issue a special use permit authorizing the requested use with such reasonable conditions as the Board determines to be desirable in promoting public health, safety and general welfare.

The conditions contained in a special use permit issued by the Board may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking

lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the petitioner may propose and the Board may find appropriate, but not to include architectural review or controls.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and insure that substantial justice be done."

**Sec. 3.** This act shall apply only to the City of Winston-Salem and Forsyth County.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 1957

## CHAPTER 589

# AN ACT RELATING TO DISQUALIFICATION OF CONTRACTORS FROM BIDDING ON CONSTRUCTION CONTRACTS OF THE CITY OF WINSTON-SALEM.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Board of Aldermen of a city may, by ordinance, delegate to the City Manager or the designee of the City Manager the authority to disqualify contractors from bidding on construction contracts of that city if the contractor failed to perform satisfactorily on past or current contracts. The ordinance shall:

- (1) Provide for a definite length of disqualification period, not to exceed three (3) years;
- (2) Provide an appeal process; and
- (3) Describe the procedure by which contractors may seek requalification.

**Sec. 2.** This act applies to the City of Winston-Salem only.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 2017

## CHAPTER 590

# AN ACT TO AUTHORIZE THE TOWN OF MINT HILL TO EXERCISE EXTRATERRITORIAL JURISDICTION WITHIN ITS SPHERE OF INFLUENCE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 1 of Chapter 161 of the Session Laws of 1991 reads as rewritten:

"Section 1. Notwithstanding Section 12 of Chapter 860 of the 1971 Session Laws, as amended by Chapter 966 of the 1983 Session Laws (Regular Session 1984), the Towns of Matthews, Mint Hill, Matthews and Pineville and the City of Charlotte may exercise the powers granted by

Article 19 of Chapter 160A of the General Statutes within extraterritorial areas in Mecklenburg County not to exceed one mile of their respective corporate limits, subject to the limitations set forth in this act. Notwithstanding Section 12 of Chapter 860 of the 1971 Session Laws, as amended by Chapter 966 of the 1983 Session Laws (Regular Session 1984), the Town of Mint Hill may exercise in Mecklenburg County the powers granted by Article 19 of Chapter 160A of the General Statutes within the sphere of influence as defined by the annexation agreement described in Chapter 953 of the Sessions Laws of 1983, subject to the limitations set forth in this act."

Sec. 2. Ordinances authorized under this act may be adopted as provided by law at any time after ratification of this act, but may not become effective prior to January 1, 1994.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1994

H.B. 1605

## CHAPTER 591

AN ACT TO MAKE MODIFICATIONS IN APPROPRIATIONS FOR OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES FOR THE 1994-95 FISCAL YEAR, TO EXTEND CERTAIN EXPIRING BUDGET PROVISIONS, AND FOR OTHER PURPOSES.

*The General Assembly of North Carolina enacts:*

### BUDGET CONTINUATION

Section 1. Notwithstanding Chapters 321 and 561 of the 1993 Session Laws, and Chapter 24 of the Session Laws of the 1994 Extra Session, the Director of the Budget shall not allocate funds for any of the purposes set out in the base budget reductions contained in Senate Bill 1505, 3rd edition, 1993 Session, and Senate Bill 1505, 5th edition, 1993 Session, that are not in controversy.

This section shall remain in effect until ratification of The Current Operations and Capital Improvements Appropriations Act of 1994, at which time that act shall become effective and shall govern appropriations and expenditures. Upon ratification of The Current Operations and Capital Improvements Appropriations Act of 1994, the Director of the Budget shall adjust allocations to give effect to that act from July 1, 1994.

Except as otherwise provided by this act, the limitations and directions for the 1994-95 fiscal year in Chapters 321 and 561 of the 1993 Session Laws, and Chapter 24 of the Session Laws of the 1994 Extra Session, shall remain in effect.

### BLOCK GRANT PROVISIONS

#### DHR BLOCK GRANT PROVISIONS

Sec. 2. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1995, according to the following schedule:

## COMMUNITY SERVICES BLOCK GRANT

01. Community Action Agencies	\$ 9,455,796
02. Limited Purpose Agencies	525,322
03. Department of Human Resources to administer and monitor the activities of the Community Services Block Grant	525,322

TOTAL COMMUNITY SERVICES BLOCK GRANT	\$ 10,506,440
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## SOCIAL SERVICES BLOCK GRANT

01. County Departments of Social Services	\$ 42,253,005
02. Allocation for In-Home Services provided by County Departments of Social Services	458,722
03. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	5,524,186
04. Division of Services for the Blind	3,205,711
05. Division of Youth Services	1,052,674
06. Division of Facility Services	343,341
07. Division of Aging	336,157
08. Day Care Services	12,158,899
09. Office of Citizen Affairs	55,458
10. State Administration and State Level Contracts	3,473,524
11. Voluntary Sterilization Funds	98,710
12. Transfer to Maternal and Child Health Block Grant	1,585,833
13. Adult Day Care Services	599,551
14. County Departments of Social Services for Child Abuse/Prevention and Permanency Planning	394,841



15. Allocation to Division of Maternal and Child Health for Grants-in-Aid to Prevention Programs	439,261
16. Transfer to Preventive Health Block Grant for Emergency Medical Services and Basic Public Health Services	633,128
17. Allocation to Preventive Health Block Grant for AIDS Education	81,001
18. Allocation to Department of Administration for North Carolina Fund for Children	45,270
19. Allocation to Home and Community Care Block Grant for Persons Age 60 and Older	1,649,077
20. Allocation to the Office of Economic Opportunity for Elderly and Handicapped Services	49,954
21. Division of Services for the Deaf and the Hard of Hearing	31,611
22. Division of Child Development for Head Start	147,467
<b>TOTAL SOCIAL SERVICES BLOCK GRANT</b>	<b>\$ 74,617,381</b>
<b>LOW INCOME ENERGY BLOCK GRANT</b>	
01. Energy Assistance Programs	\$ 17,934,847
02. Crisis Intervention	5,411,563
03. Administration	2,413,779
04. Weatherization Program	2,100,000
05. Indian Affairs	33,022
<b>TOTAL LOW INCOME ENERGY BLOCK GRANT</b>	<b>\$ 27,893,211</b>
<b>MENTAL HEALTH SERVICES BLOCK GRANT</b>	
01. Provision of Community-Based Services in accordance with the Mental Health Study Commission's	

Adult Severe and Persistently Mentally Ill Plan	\$ 3,794,179
02. Provision of Community-Based Services in accordance with the Mental Health Study Commission's Child Mental Health Plan	1,802,819
03. Administration	514,037
<b>TOTAL MENTAL HEALTH SERVICES BLOCK GRANT</b>	<b>\$ 6,111,035</b>

**BLOCK GRANT FOR THE PREVENTION AND  
TREATMENT OF SUBSTANCE ABUSE**

01. Provision of Community-Based Alcohol and Drug Abuse Services, Tuberculosis Services, and Services provided by the Alcohol, Drug Abuse Treatment Centers	\$ 10,935,939
02. Continuation and Expansion of Services for Pregnant Women and Women with Dependent Children	5,057,281
03. Continuation and Expansion of Services to IV Drug Abusers and others at risk for HIV diseases	4,560,670
04. Provision of services in accordance with the Mental Health Study Commission's Child and Adolescent Alcohol and other Drug Abuse Plan	4,816,501
05. Administration	1,749,371
<b>TOTAL BLOCK GRANT FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE</b>	<b>\$ 27,119,762</b>

**CHILD CARE AND DEVELOPMENT BLOCK GRANT**

01. Child Day Care Services	\$ 16,544,305
02. Administrative Expenses and Quality and Availability Initiatives	1,832,456
03. Before and After School Child Care Programs and Early Childhood Development Programs	4,686,840

04. Quality Improvement Activities	1,511,106
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**TOTAL CHILD CARE AND DEVELOPMENT  
BLOCK GRANT**

**\$ 24,574,707**

**(c) Increases in Federal Fund Availability**

Any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended by the Department of Human Resources, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly. All these budgeted increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

This subsection shall not apply to Job Training Partnership Act funds.

(d) If funds appropriated through the Child Care and Development Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to other programs, in accordance with the federal requirements of the grant, in order to use the federal funds fully.

**NER BLOCK GRANT PROVISIONS**

**Sec. 3.** (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1995, according to the following schedule:

<b>TOTAL JOB TRAINING PARTNERSHIP ACT</b>	<b>\$ 53,841,243</b>
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**COMMUNITY DEVELOPMENT BLOCK GRANT**

01. State Administration	\$ 1,097,380
02. Urgent Needs and Contingency	2,413,646
03. Housing Development	-0-
04. Economic Development	9,654,586
05. Community Revitalization	30,404,698
06. State Technical Assistance	498,690
07. Entrepreneurial Empowerment	4,800,000
08. Microenterprise	1,000,000

**TOTAL COMMUNITY DEVELOPMENT  
BLOCK GRANT**

**\$ 49,869,000**

## MATERNAL AND CHILD HEALTH SERVICES

01. Healthy Mother/Healthy Children Block Grants to Local Health Departments	\$ 11,600,877
02. High Risk Maternity Clinic Services, Perinatal Education, and Consultation to Local Health Departments and Other Health Care Providers	1,565,313
03. Services to Children with Disabilities	5,065,331
04. Reimbursements for Local Health Departments for Contracted Nutritional Services	120,530

TOTAL MATERNAL AND CHILD HEALTH SERVICES	\$ 18,352,051
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## PREVENTIVE HEALTH BLOCK GRANT

01. Emergency Medical Services	\$ 452,375
02. Basic Public Health Services	180,753
03. Hypertension Programs	773,203
04. Statewide Health Promotion Programs	2,985,265
05. Fluoridation of Water Supplies	228,404
06. Rape Prevention and Rape Crisis Programs	183,632
07. AIDS/HIV Education, Counseling, and Testing	81,001
08. Office of Minority Health and Minority Health Council	190,000

TOTAL PREVENTIVE HEALTH BLOCK GRANT	\$ 5,074,633
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## (b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program, in each of the federal block grants listed above, shall be reduced by the same percentage as the reduction in federal funds.

## (c) Increases in Federal Fund Availability

Any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended as follows:

- (1) For the Community Development Block Grant -- each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.
- (2) For the Maternal and Child Health Services Block Grant -- thirty percent (30%) of these additional funds shall be allocated to services for children with special health care needs and seventy percent (70%) shall be allocated to local health departments to assist in the reduction of infant mortality.
- (3) For the Preventive Health Block Grants -- these additional funds may be budgeted by the appropriate department, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly. All these budgeted increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

(d) Education Setaside of JTPA Funds

The Department of Commerce shall certify to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office when Job Training Partnership Act funds have been distributed to each agency, the total amount distributed to each agency, and the total amount of eight percent (8%) Education Setaside funds received.

(e) Limitations on Community Development Block Grant Funds

Of the funds appropriated in this section for the Community Development Block Grant, not more than one million ninety-seven thousand three hundred eighty dollars (\$1,097,380) may be used for State administration; up to two million four hundred thirteen thousand six hundred forty-six dollars (\$2,413,646) may be used for Urgent Needs and Contingency; up to nine million six hundred fifty-four thousand five hundred eighty-six dollars (\$9,654,586) may be used for Economic Development; not less than thirty million four hundred four thousand six hundred ninety-eight dollars (\$30,404,698) shall be used for Community Revitalization; up to four hundred ninety-eight thousand six hundred ninety dollars (\$498,690) may be used for State Technical Assistance; up to four million eight hundred thousand dollars (\$4,800,000) may be used for Entrepreneurial Empowerment projects; and up to one million dollars (\$1,000,000) may be used for Microenterprise projects. Housing Development projects will be funded in 1994 from available Program Income. If federal block grant funds are reduced or increased by the United States Congress after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

## EMPLOYEE SALARIES

**Sec. 4.** The salary schedules and specific salaries established for fiscal year 1993-94 in Chapter 321 of the 1993 Session Laws for offices and



positions shall remain in effect until the effective date of The Current Operations and Capital Improvements Appropriations Act of 1994.

Teachers and other employees shall not move up on these salary schedules or receive automatic, annual, performance, merit, or other increments or bonuses until authorized by the General Assembly.

#### CLARIFY "UNRESERVED CREDIT BALANCE"

Sec. 5. (a) G.S. 143-15.2 reads as rewritten:

"§ 143-15.2. *Use of General Fund credit balance.*

The State Controller shall reserve up to one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year to the Savings Reserve Account as provided in G.S. 143-15.3, unless that would result in the Savings Reserve Account having funds in excess of five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds; in that case, only funds sufficient to reach the five percent (5%) level shall be reserved. The State Controller shall also reserve the lesser of (i) one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund and (ii) one and one-half percent (1.5%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year to the Repairs and Renovations Reserve Account as provided in G.S. 143-15.3A. The General Assembly may appropriate that part of the anticipated General Fund credit balance not expected to be reserved to the Savings Reserve Account or the Repairs and Renovations Reserve Account only for capital improvements or other one-time expenditures. As used in this section, the term 'unreserved credit balance' means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A."

(b) G.S. 143-15.3(a) reads as rewritten:

"(a) There is established a Savings Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds. If the balance in the Savings Reserve Account falls below this level during a fiscal year, the State Controller shall reserve to the Savings Reserve Account for the following fiscal years up to one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account again equals five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds. As used in this section, the term 'unreserved credit balance' means that part of the credit balance, balance amount, as determined on a cash basis, not already reserved to before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account, Account pursuant to this section and G.S. 143-15.3A."

(c) G.S. 143-15.3A(a) reads as rewritten:

"(a) There is established a Repairs and Renovations Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year. As used in this section, the term 'unreserved credit balance' means ~~that part of the credit balance,~~ balance amount, as determined on a cash basis, ~~not already reserved to~~ before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account. Account pursuant to this section and G.S. 143-15.3."

(d) This section becomes effective June 30, 1994.

## EXTEND SENTENCING COMMISSION

**Sec. 6.** (a) Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws and Chapters 253 and 321 of the 1993 Session Laws, reads as rewritten:

"Sec. 8. This act is effective upon ratification, and shall expire July 1, 1994, 1995."

(b) G.S. 164-38 reads as rewritten:

"§ 164-38. *Terms of members; compensation; expenses.*

The terms of existing members shall expire on June 30, 1993. ~~New members shall be appointed or the existing members reappointed by the appointing authorities to serve until July 1, 1994, 1995, unless they resign or are removed.~~ Members serving by virtue of elective or appointive office or as designees of such officeholders may serve only so long as the officeholders hold those respective offices. Members appointed by the Speaker of the House and the President Pro Tempore of the Senate may be removed by the appointing authority without cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a hearing. Effective with respect to members designated on or after July 1, 1992, a person making a designation pursuant to G.S. 164-37 may not make another designation, except that the person's successor in elective or appointive office may make a new designation.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable."

(c) This section is effective upon ratification.

## PIONEER TESTING RULE WAIVER EXTENSION

**Sec. 7.** Subsection (n) of Section 220 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(n) Effective July 1, 1994, July 1, 1995, G.S. 122C-151.1 is repealed."

**MEDICAID INPATIENT HOSPITAL REIMBURSEMENT CHANGE**

**Sec. 8.** Section 227 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 227. Effective July 1, 1994, October 1, 1994, the Department of Human Resources, Division of Medical Assistance, shall implement a budget-neutral Diagnosis-Related Group reimbursement methodology for inpatient hospital services. ~~In addition, the Department shall study the feasibility of implementing selective contracts for hospital inpatient services and shall report its recommendations to the General Assembly by March 15, 1994.~~"

**WILDLIFE RESOURCES COMMISSION/FUNDS FOR SALARY INCREASES**

**Sec. 9.** Subsection (d) of Section 290 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(d) Subsection (b) of this section becomes effective July 1, ~~1994~~. 1995."

**UNIVERSITY OF NORTH CAROLINA MANAGEMENT FLEXIBILITY**

**Sec. 10.** (a) Subsection (f) of Section 206.2 of Chapter 689 of the 1991 Session Laws reads as rewritten:

"(f) This section is effective upon ratification. ~~This section expires Subsection (c) of this section expires June 30, 1994.~~"

(b) This section becomes effective June 30, 1994.

**SCHOOL TECHNOLOGY PLANS/FUNDS**

**Sec. 11.** (a) G.S. 115C-102.5(c) reads as rewritten:

"(c) Notwithstanding G.S. 120-123 and subsection (b) of this section, ~~for the 1993-94 fiscal year only~~, the Commission shall also include one member of the Senate appointed by the President Pro Tempore of the Senate and one member of the House of Representatives appointed by the Speaker of the House of Representatives. These members shall be voting members. The term of office of these members shall end November 1, 1994."

(b) This section becomes effective June 30, 1994.

**1993 PROFESSIONAL COUNSELOR LICENSING ACT EXEMPTION**

**Sec. 12.** G.S. 90-332.1(a) is amended by inserting two new subdivisions to read:

"(4.1) Any person counseling within the scope of employment at a local community college.

(4.2) Any person counseling within the scope of employment at a private higher education institution as defined in G.S. 116-22(1)."

**DOT VEHICLES EXEMPTION EXTENDED**

**Sec. 13.** (a) Subsection (b) of Section 70 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"(b) This section expires June 30, ~~1994~~, 1995."

(b) This section becomes effective June 30, 1994.

**HARRIET'S HOUSE FUNDS**

**Sec. 14.** (a) The balance of the two hundred thousand dollars (\$200,000) appropriated in Chapter 321 of the 1993 Session Laws to the Department of Correction for the 1993-94 fiscal year to support the programs of Harriet's House shall not revert at the end of the fiscal year but shall remain in the Department during the 1994-95 fiscal year for that purpose.

(b) This section becomes effective June 30, 1994.

**PITT REGIONAL MEDIATION CENTER FUNDS**

**Sec. 15.** Section 220.2 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 200.2. Of the funds appropriated to the Judicial Department from the General Fund for the 1993-95 biennium, ~~1993-94 fiscal year~~, the sum of forty thousand dollars (\$40,000) for the 1993-94 fiscal year and the sum of forty thousand dollars (\$40,000) for the 1994-95 fiscal year may be used for The Mediation Center of Pitt County, Inc., a dispute settlement center in Pitt County, to establish a regional mediation and dispute settlement center to serve Eastern North Carolina."

**1993 PROFESSIONAL COUNSELOR LICENSING ACT CORRECTION**

**Sec. 16.** (a) G.S. 90-332.1(a)(8) reads as rewritten:

"(8) Any person performing ~~mental health~~ counseling solely as an employee of an area facility, as defined in G.S. 122C-3(14)a., if both of the following apply:

- a. The ~~mental health~~ services are provided by (i) a qualified ~~mental health~~ professional who meets or exceeds the minimum educational qualifications for licensure as a licensed professional counselor under this Article, as defined in G.S. 122C-3(31) and subject to the rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, or (ii) an employee supervised by a qualified professional as defined in G.S. 122C-3(31);
- b. The area facility has obtained written verification from the following boards that the employee has not had his or her license, registration, or certification revoked, rescinded, or suspended: the North Carolina Board of Licensed Professional Counselors, the North Carolina State Board of Examiners of Practicing Psychologists, the North Carolina Certification Board for Social Work, and the North Carolina Marital and Family Therapy Certification ~~Board~~, Board;"

(b) G.S. 90-332.1(a) is amended by adding the following new subdivisions to read:

"(9) Any person performing counseling as an employee of a hospital or other health care facility licensed under Chapter 131D, 131E, or 122C who is performing this counseling under the supervision of a qualified professional as defined in G.S. 122C-3(31); and

(10) Any employee assistance professional providing core-specific employee assistance program (EAP) activities, as defined by the

Employee Assistance Professionals Association Standards for Employee Assistance Programs Part II: Professional Guidelines (1988)."

### **CERTAIN SMART START FUNDS DO NOT REVERT**

**Sec. 17.** (a) Funds appropriated to the Division of Child Development, Department of Human Resources, in fiscal year 1993-94 and allocated to the 12 local Smart Start projects established during the 1993-94 fiscal year shall not revert until June 30, 1995, but shall remain with the Division for use as provided under Part 10B of Article 3 of Chapter 143B of the General Statutes.

(b) Funds appropriated to the Division of Child Development, Department of Human Resources, in fiscal year 1993-94 and allocated for the statewide evaluation of Smart Start, the statewide needs and resources assessments, the professional development of day care providers, the automated payment system, and the T.E.A.C.H. program shall not revert until June 30, 1995, but shall remain with the Division for use as defined by the original appropriation for these funds.

(c) It is the intent of the General Assembly that this section's postponement of reversions of Smart Start funds shall be for one year only and that it shall not be extended.

(d) The funds in subsections (a) and (b) are nonrecurring and shall not become a part of the continuation budget for the Division of Child Development, Department of Human Resources.

(e) This section becomes effective June 30, 1994.

### **NORTH CAROLINA HEALTH PLANNING COMMISSION FUNDS**

**Sec. 18.** (a) Funds appropriated to the North Carolina Health Planning Commission in the 1993-94 fiscal year shall not revert but shall remain available during the 1994-95 fiscal year to cover the costs of services necessary to the work of the Commission.

(b) This section becomes effective June 30, 1994.

### **PRISON CHAPEL FUNDS**

**Sec. 19.** (a) Section 44 of Chapter 1044 of the 1991 Session Laws reads as rewritten:

"Sec. 44. A Reserve for Prison Chapels is established in the Office of State Budget and Management to construct chapels at correctional facilities. The funds are to be allocated to specific chapel projects when a minimum local match of one dollar for every two State dollars needed for the estimated project cost is made available. ~~No more than fifty thousand dollars (\$50,000) of State funds shall be allocated to any single project. Funds appropriated to the reserve established in this section shall not revert but shall remain available to the Department for the purposes of this section.~~

The Department of Correction shall notify all prison units of the availability of these funds and shall solicit letters of intent from interested units. The Department shall evaluate the letters of intent for proposed chapel projects, notify those prison units whose projects appear most likely to obtain local matching funds during the 1992-93 fiscal year, and authorize



those units to proceed based upon the total availability of State funds. The Department shall notify the Office of State Budget and Management of those units that have been authorized to proceed.

The Office of State Budget and Management shall report quarterly to the Joint Legislative Commission on Governmental Operations on any allocations from the reserve established in this section."

(b) This section becomes effective June 30, 1994.

#### **SUBSTANCE ABUSE FUNDS SHALL NOT REVERT**

Sec. 20. (a) The balance of the two hundred thousand dollars (\$200,000) appropriated in Chapter 321 of the 1993 Session Laws to the Department of Correction for the 1993-94 fiscal year for a pilot community-based treatment program for alcohol and drug abusers on probation and parole shall not revert at the end of the fiscal year but shall remain in the Department for that purpose.

(b) This section becomes effective June 30, 1994.

#### **EFFECTIVE DATE**

Sec. 21. Except as otherwise provided, this act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 30th day of June, 1994.

H.B. 536

#### **CHAPTER 592**

### **AN ACT TO ALLOW AREA MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE AUTHORITIES TO PURCHASE PROPERTY BY INSTALLMENT CONTRACTS.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 122C-147, as amended by Section 220 of Chapter 321 of the 1993 Session Laws, reads as rewritten:

"§ 122C-147. *Financing and title of area authority property.*

(a) Repealed by Session Laws 1993, c. 321, s. 220(i).

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a 24-hour and day facility or (ii) in contracting with a private, nonprofit corporation that operates 24-hour and day facilities for the mentally ill, developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation.

- (2) Upon cessation of the use of the 24-hour and day facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the 24-hour and day facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire ~~it~~ it, including the authority to finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area authority with the ~~consent~~ approval of the board or boards of commissioners of all the counties ~~which~~ that comprise the area authority. ~~The consent to this variation~~ The approval of a board of county commissioners shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. Real property may not be acquired by means of an installment contract under G.S. 160A-20 unless the Local Government Commission has approved the acquisition. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal ~~property, including~~ by property. An acquisition may be accomplished by an installment contract under G.S. 160A-20 or by a lease-purchase agreement. An area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. The area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the Local Government Commission, when required by that statute. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in *Willie M., et al. vs. Hunt, et al.* (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in *Willie M., et al. vs. Hunt, et al.* (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a 24-hour and day facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property."

**Sec. 2.** G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 689

## CHAPTER 593

### AN ACT TO CREATE THE OFFENSE OF THIRD DEGREE TRESPASS IN WILKES AND YADKIN COUNTIES.

*The General Assembly of North Carolina enacts:*

Section 1. Section 2 of Chapter 862 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act applies only to ~~Rowan County~~, Rowan, Wilkes, and Yadkin Counties."

Sec. 2. This act becomes effective December 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 977

## CHAPTER 594

### AN ACT TO AMEND THE ENTRY OF JUDGMENT RULE, RULE 58 OF THE RULES OF CIVIL PROCEDURE, AS REQUESTED BY THE NORTH CAROLINA BAR ASSOCIATION.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 1A-1, Rule 58, reads as rewritten:

"Rule 58. Entry of judgment.

~~Subject to the provisions of Rule 54(b): Upon a jury verdict that a party shall recover only a sum certain or costs or that all relief shall be denied or upon a decision by the judge in open court to like effect, the clerk, in the absence of any contract direction by the judge, shall make a notation in his minutes of such verdict or decision and such notation shall constitute the entry of judgment for the purposes of these rules. The clerk shall forthwith prepare, sign, and file the judgment without awaiting any direction by the judge.~~

~~In other cases where judgment is rendered in open court, the clerk shall make a notation in his minutes as the judge may direct and such notation shall constitute the entry of judgment for the purposes of these rules. The judge shall approve the form of the judgment and direct its prompt preparation and filing.~~

~~In cases where judgment is not rendered in open court, entry of judgment for the purposes of these rules shall be deemed complete when an order for~~

~~the entry of judgment is received by the clerk from the judge, the judgment is filed and the clerk mails notice of its filing to all parties. The Clerk's notation on the judgment of the time of mailing shall be prime facie evidence of mailing and the time thereof. Rule 54(b), a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court. The party designated by the judge or, if the judge does not otherwise designate, the party who prepares the judgment, shall serve a copy of the judgment upon all other parties within three days after the judgment is entered. Service and proof of service shall be in accordance with Rule 5. If service is by mail, three days shall be added to the time periods prescribed by Rule 50(b), Rule 52(b), and Rule 59. All time periods within which a party may further act pursuant to Rule 50(b), Rule 52(b), or Rule 59 shall be tolled for the duration of any period of noncompliance with this service requirement, provided however that no time period under Rule 50(b), Rule 52(b), or Rule 59 shall be tolled longer than 90 days from the date the judgment is entered. Consent for the signing and entry of a judgment out of term, session, county, and district shall be deemed to have been given unless an express objection to such action was made on the record prior to the end of the term or session at which the matter was heard.~~

~~Notwithstanding any other law to the contrary, any judgment entered by a magistrate in a small claims action pursuant to Article 19 of Chapter 7A shall be entered in accordance with this Rule except judgments announced and signed in open court at the conclusion of a trial are considered to be served on the parties, and copies of any judgment not announced and signed in open court at the conclusion of a trial shall be served by the magistrate on all parties in accordance with this Rule, within three days after the judgment is entered. If service is by mail, three days shall be added to the time periods prescribed by G.S. 7A-228. All time periods within which a party may further act pursuant to G.S. 7A-228 shall be tolled for the duration of any period of noncompliance of this service requirement, provided that no time period shall be tolled longer than 90 days from the date judgment is entered."~~

**Sec. 2.** This act becomes effective October 1, 1994, and applies to all judgments subject to entry on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1551

## CHAPTER 595

AN ACT TO ELIMINATE THE REQUIREMENT OF PROOF OF FINANCIAL RESPONSIBILITY UPON RENEWAL OF A DRIVERS LICENSE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-7(f) reads as rewritten:

"(f) A drivers license expires on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any



time within 60 days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this Chapter, the Division shall issue a new license to him. A new license issued within 60 days prior to the expiration of an applicant's old license or within 12 months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Any person serving in the armed forces of the United States on active duty and holding a valid drivers license properly issued under this section and stationed outside the State of North Carolina may renew his license by making application to the Division by mail. Any other person, except a nonresident as defined in this Article, who holds a valid drivers license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section 'temporarily' shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph ordinarily required for the renewal of a drivers license, and may impose in lieu thereof such conditions as it may deem appropriate to each particular application; provided that such license shall expire 30 days after the licensee returns to North Carolina, and such license shall be designated as temporary.

Provided further, that no person who applies for the renewal of a drivers license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.

Provided further, that no person who applies for the renewal of his drivers license ~~and who must take the written examination pursuant to this section shall be issued a renewed license unless such person has furnished the required to furnish~~ proof of financial responsibility specified in subsection (c1)."

**Sec. 2.** G.S. 20-7(c1), as amended by Chapter 368 of the 1993 Session Laws, reads as rewritten:

"(c1) Insurance. -- The Division may not issue a drivers license to a person until the person has furnished proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

- (1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

- (2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term 'nonfleet private passenger motor vehicle' has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

The requirement of furnishing proof of financial responsibility does not apply to a person who applies for a renewal of his his or her drivers license ~~and who is not required to take the written examination. license.~~

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

Sec. 3. Section 1 of this act becomes effective upon ratification, and expires December 31, 1994. Section 2 of this act becomes effective January 1, 1995. Section 3 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1755

## CHAPTER 596

AN ACT TO AMEND THE COUNTIES IN WHICH IT IS A CRIMINAL OFFENSE TO PRACTICE PHRENOLOGY, PALMISTRY, FORTUNE TELLING, CLAIRVOYANCE, AND OTHER SIMILAR CRAFTS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 14-401.5 reads as rewritten:

"§ 14-401.5. *Practice of phrenology, palmistry, fortune-telling or clairvoyance prohibited.*

It shall be unlawful for any person to practice the arts of phrenology, palmistry, clairvoyance, fortune telling and other crafts of a similar kind in the counties named herein. Any person violating any provision of this section shall be guilty of a Class 2 misdemeanor.

This section shall not prohibit the amateur practice of phrenology, palmistry, fortune-telling or clairvoyance in connection with school or church socials, provided such socials are held in school or church buildings.

Provided that the provisions of this section shall apply only to the Counties of Alexander, Ashe, Avery, ~~Bertie~~, Bladen, Brunswick, Buncombe, Burke, Caldwell, Camden, Carteret, Caswell, Chatham, Chowan, Clay, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Franklin, ~~Gates~~, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, ~~Hertford~~, Hoke, Iredell, Johnston, Lee, Lenoir, Madison, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, ~~Northampton~~, Onslow, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Surry, Transylvania, Union, ~~Vance, Wake and Warren~~, Wake and Wayne."

Sec. 2. This act becomes effective October 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1770

## CHAPTER 597

# AN ACT TO MAKE IT A FELONY FOR ANY PERSON TO TRANSFER A HANDGUN TO A MINOR AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 14-269.7(c) reads as rewritten:

"(c) The following definitions apply in this section:

(1) Handgun. -- ~~Any dangerous~~ A firearm including a pistol or revolver that has a short stock and is designed to be fired by the use of a single hand, hand, or any combination of parts from which such a firearm can be assembled.

(2) Minor. -- Any person under ~~the age of~~ 18 years of age."

Sec. 2. G.S. 14-315 reads as rewritten:

"§ 14-315. *Selling or giving weapons to minors.*

(a) ~~Offense.~~ Sale of Weapons Other Than Handguns. -- ~~If any a person shall sell, offer sells, offers for sale, give gives, or in any way dispose transfers of to a minor any handgun as defined in G.S. 14-269.7, pistol, pistol cartridge, brass knucks, bowie knife, dirk, shurikin, leaded cane cane, or slungshot, he shall be the person is guilty of a Class 1 misdemeanor and and, in addition, shall forfeit the proceeds of any sale made in violation of this section.~~

(a1) Sale of Handguns. -- If a person sells, offers for sale, gives, or in any way transfers to a minor any handgun as defined in G.S. 14-269.7, the person is guilty of a Class I felony and, in addition, shall forfeit the proceeds of any sale made in violation of this section. This section does not apply in any of the following circumstances:

(1) The handgun is lent to a minor for temporary use if the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

(2) The handgun is transferred to an adult custodian pursuant to Chapter 33A of the General Statutes, and the minor does not take possession of the handgun except that the adult custodian may

allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

- (3) The handgun is a devise or legacy and is distributed to a parent or guardian under G.S. 28A-22-7, and the minor does not take possession of the handgun except that the parent or guardian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

~~(b) Defense. -- It shall be a defense to a violation of subsection (a) of this section if the person:~~

- ~~(1) Shows that the minor produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the minor; or~~
- ~~(2) Produces evidence of other facts that reasonably indicated at the time of sale that the minor was at least the required age.~~

(b1) Defense. -- It shall be a defense to a violation of this section if all of the following conditions are met:

- (1) The person shows that the minor produced an apparently valid permit to receive the weapon, if such a permit would be required under G.S. 14-402 or G.S. 14-409.1 for transfer of the weapon to an adult.
- (2) The person reasonably believed that the minor was not a minor.
- (3) The person either:
- a. Shows that the minor produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the minor's age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the minor; or
- b. Produces evidence of other facts that reasonably indicated at the time of sale that the minor was at least the required age."

Sec. 3. This act becomes effective January 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1961

## CHAPTER 598

AN ACT TO ENCOURAGE THE VOLUNTARY REMEDIATION OF CONTAMINATED SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION, AND TO PROVIDE THAT A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT IN DOCUMENTS REQUIRED UNDER THE SOLID WASTE LAWS IS GUILTY OF A MISDEMEANOR.



Whereas, the General Assembly of North Carolina recognizes the importance of protecting the environment of this State, as well as the health and safety of its inhabitants and employees; and

Whereas, man's past activities, even those that were legal and proper at the time, have resulted in the contamination of land, surface water, groundwater, and other media within North Carolina; and

Whereas, the number of such contaminated sites exceeds the abilities of North Carolina and federal officials to manage in an expeditious fashion; and

Whereas, the expeditious cleanup of such contaminated sites is in the best interests of the State of North Carolina and its citizens and environment, in that it more quickly removes or reduces any threat to public health or the environment while often lowering the total costs of such actions; and

Whereas, more contaminated sites could be cleaned up more expeditiously and effectively by allowing the Department of Environment, Health, and Natural Resources to use independent outside consultants to oversee such work; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 130A-310.9 reads as rewritten:

"§ 130A-310.9. ~~Maximum financial responsibility; voluntary remedial actions.~~ Voluntary remedial actions; maximum financial responsibility; agreements; implementation and oversight by private engineering and consulting firms.

(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of three million dollars (\$3,000,000) for the cost of implementing ~~such~~ a remedial action program at a single inactive hazardous substance or waste disposal site. The limitation of liability contained in this section applies only to the cost of implementation of the program and does not apply to the cost of the development of the remedial action plan.

(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party which provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of ~~such~~ the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2.

(c) The Department may select and hire private environmental consulting and engineering firms to implement and oversee voluntary remedial actions



by owners, operators, or other responsible parties. An owner, operator, or other responsible party that chooses to use a private environmental consulting or engineering firm shall reimburse the Department for the cost of all work performed by the firm. A voluntary remedial action that is implemented and overseen by a private environmental consulting or engineering firm shall be subject to rules adopted pursuant to G.S. 130A-310.12(b)."

Sec. 2. G.S. 130A-310.12 reads as rewritten:

"§ 130A-310.12. Administrative procedure; adoption of rules.

(a) ~~Except as may be otherwise specifically provided the~~ The provisions of Chapter 150B of the General Statutes apply to this Part. The Commission shall adopt, pursuant to Chapter 150B of the General Statutes, administrative adopt rules for the implementation of this Part not later than six months after enactment. Such rules may be the same as or similar to the federal rules for implementation of CERCLA/SARA, Part.

(b) The Commission shall adopt rules governing the selection and use of private environmental engineering and consulting firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties under G.S. 130A-310.9(c). Rules adopted under this subsection shall specify:

- (1) Standards applicable to private environmental consulting and engineering firms.
- (2) Procedures for identifying and choosing firms.
- (3) Standards and procedures governing charges by private environmental consulting and engineering firms and the reimbursement of those charges.
- (4) Financial assurances to be required of an owner, operator, or other responsible party that chooses to implement a voluntary remedial action under G.S. 130A-310.9(c)."

Sec. 3. Part 2 of Article 1 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-26.2. Penalty for false reporting under Article 9.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars (\$10,000)."

Sec. 4. The Environmental Review Commission may study, in cooperation with personnel designated by the Secretary of Environment, Health, and Natural Resources, the possible implementation of a program that would use licensed site professionals to oversee voluntary and other remedial actions by responsible parties in lieu of oversight by State personnel, the procedures and standards that would govern the designation

and licensing of licensed site professionals, the functions of licensed site professionals, and the weight to be accorded by a State agency to any work overseen and approved by a licensed site professional.

**Sec. 5.** Sections 1 and 3 of this act become effective 1 January 1995. Sections 2, 4, and 5 of this act are effective upon ratification. Rules adopted pursuant to G.S. 130A-310.12(b), as enacted by Section 2 of this act, shall not become effective prior to 1 January 1995.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1917

## CHAPTER 599

# AN ACT TO AMEND THE EFFECTIVE DATE OF THE NORTH CAROLINA INTERSTATE BANKING ACT AND TO SET AN APPLICATION FEE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 16 of Chapter 175 of the 1993 Session Laws reads as rewritten:

"Sec. 16. Sections 1 through 5 of this act are effective upon ratification. Sections 6 through 15 of this act become effective July 1, 1996. July 1, 1994."

**Sec. 2.** G.S. 53-214(b) reads as rewritten:

"(b) The State Banking Commission ~~may promulgate rules, including the imposition of a reasonable application and administration fee,~~ shall adopt rules to implement and effectuate the provisions of this Article."

**Sec. 3.** G.S. 53-211(a) reads as rewritten:

"(a) An out-of-state bank holding company that does not have a North Carolina bank ~~subsidiary (other subsidiary, other than a North Carolina bank subsidiary that was acquired either in a transaction involving assistance by the Federal Deposit Insurance Corporation)~~ Corporation or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in Section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a)), may acquire a North Carolina bank holding company or a North Carolina bank with the approval of the Commissioner. The out-of-state bank holding company shall submit to the Commissioner an application for approval of such acquisition, which application shall be approved only if the Commissioner determines that the laws of the state in which the out-of-state bank holding company making the acquisition has its principal place of business permit North Carolina bank holding companies to acquire banks and bank holding companies in that state. Additionally, the Commissioner shall make the acquisition subject to any conditions, restrictions, requirements, or other limitations that would apply to the acquisition by a North Carolina bank holding company of a bank or bank holding company in the state where the out-of-state bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or bank holding company in such state by a bank holding company all of the subsidiaries of which are located in that state. The applicant shall submit an application fee of five thousand dollars

(\$5,000) plus two thousand dollars (\$2,000) for each North Carolina bank or bank holding company being acquired."

**Sec. 4.** This act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1663

## CHAPTER 600

AN ACT TO EXEMPT ALL ANNUITIES AND FUNDING AGREEMENTS FROM PREMIUM TAXATION; TO CLARIFY THE AUTHORIZATION FOR THE ISSUANCE OF AND ESTABLISH STANDARDS FOR FUNDING AGREEMENTS; AND TO MAKE CONFORMING CHANGES IN LAWS ON PRIORITY OF DISTRIBUTION OF ASSETS OF INSOLVENT INSURERS AND ON SECURITIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-7-16. Funding agreements authorized.

(a) As used in this section, 'funding agreement' means an agreement that authorizes a licensed life insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A 'funding agreement' is not an 'annuity' as defined in G.S. 58-7-15; and is not a 'security' as defined in G.S. 78A-2.

(b) Any insurer that is licensed to write life insurance or annuities in this State may deliver, or issue for delivery, funding agreements in this State.

(c) Funding agreements may be issued to persons authorized by a state or foreign country to engage in an insurance business or to their affiliates, including affiliates of the issuer. Issuance to an affiliate of an issuer is not subject to the provisions of Article 19 of this Chapter. Funding agreements may be issued to persons other than those licensed to write life insurance and annuities or their affiliates in order to fund one or more of the following:

- (1) Benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.
- (2) The activities of an organization exempt from taxation under section 501(c) of the Internal Revenue Code or of any similar organization in a foreign country.
- (3) A program of the government of the United States, the government of a state, foreign country, or political subdivision, agency, or instrumentality thereof.
- (4) An agreement providing for one or more payments in satisfaction of a claim or liability.
- (5) A program of an institution that has assets in excess of twenty-five million dollars (\$25,000,000).

(d) Amounts shall not be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class.

(e) Amounts paid to the insurer and proceeds applied under optional modes of settlement under funding agreements may be allocated by the insurer to one or more separate accounts pursuant to G.S. 58-7-95.

(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

- (1) Standards to be followed in the approval of forms of funding agreements.
- (2) Reserves to be maintained by insurers issuing funding agreements.
- (3) Accounting and reporting of funds credited under funding agreements.
- (4) Disclosure of information to be given to holders and prospective holders of funding agreements.
- (5) Qualification and compensation of persons selling funding agreements on behalf of insurers."

Sec. 2. G.S. 58-30-220 reads as rewritten:

"§ 58-30-220. *Priority of distribution.*

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds shall be retained for ~~such~~ payment before the members of the next class receive any payment. No subcategories shall be established within the categories in ~~any~~ a class. The order of distribution of claims shall be:

- (1) Claims for cost of administration and conservation of assets of the insurer.
- (2) Compensation actually owing to employees other than officers of the insurer for services rendered within three months prior to the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars (\$1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.
- (3) Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, ~~up to an amount of three hundred thousand dollars (\$300,000) per claim~~ policies; claims for funds or consideration held under funding agreements, as defined in G.S. 58-7-16; claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values; and claims of domestic and foreign guaranty associations; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for



subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.

- (4) Claims for unearned premiums.
- (5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; ~~those portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, in excess of three hundred thousand dollars (\$300,000) per claim,~~ and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages."

Sec. 3. G.S. 78A-2(11) reads as rewritten:

"(11) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract including without limitation any investment contract taking the form of a whiskey warehouse receipt or other investment of money in whiskey or malt beverages; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under ~~such~~ a title or lease; or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 'Security' does not include any insurance or endowment ~~policy~~ policy, funding agreement, as defined in G.S. 58-7-16, or annuity contract under which an insurance company promises to pay (i) a fixed sum of money either in a lump sum or periodically for life or for some other specified period, or (ii) benefits or payments or value ~~which~~ that vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with ~~any of such contracts~~ a contract have been placed if the delivering or issuing insurance company has currently satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-7-95."

Sec. 4. G.S. 105-228.5 reads as rewritten:

"§ 105-228.5. *Taxes measured by gross premiums.*

(a) Tax Levied. -- Every insurance company and every corporation subject to Article 65 Articles 65 and 66 of Chapter 58 corporation shall pay to the Commissioner of Insurance, at the time and rates provided in this section, of the General Statutes is subject to the tax imposed by this section. A person who is subject to the tax imposed by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.



(b) Tax Base. -- The tax imposed by this section on an insurance company shall be a tax measured by gross premiums from business done in this State during the preceding calendar year, or, for Articles 65 and 66 of Chapter 58 corporations, a tax year and the tax on a corporation subject to Article 65 of Chapter 58 of the General Statutes shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by such corporations the corporation during the preceding calendar year. In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, benefits that are not annuities, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other year, other than for contracts for reinsurance) of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, firms, or corporations resident in this State, or in the case of group policies policies, for any contracts of insurance covering persons resident within this State. State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except The only deductions allowed shall be for premiums returned under one or more of the following conditions: premiums refunded on policies rescinded for fraud or other breach of contract; premiums which contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate; and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend dividend, or in by any other manner whatsoever, means except waiver of premiums by in the case of premiums waived by any of said companies pursuant to under a contract for waiver of premium in case of disability.

An insurer, in computing its premium taxes, shall pay premium taxes on a premium for the purchase of annuities at the time the contract holder elects to commence annuity benefits, instead of at the time the premium is collected.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the

Workers' Compensation Act, shall mean all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. -- Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

- (1) ~~all~~ All premiums received on or after July 1, 1973, from policies or ~~contracts,~~ contracts issued in connection with the funding of a pension, ~~annuity~~ annuity, or profit-sharing plan, plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-134.1(1) and the gross amount of all such premiums shall be exempt from the tax levied by this section. G.S. 105-228.90.
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workers' Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.

In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State, or derived from business written in this State shall be

~~deemed to be for contracts covering persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.~~

(d) Tax Rates. -- The tax rate to be applied to gross premiums collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on annuities and all other insurance contracts issued by insurers shall be ~~one and eight hundred seventy-five thousandths percent (1.875%) for taxable years beginning on or after January 1, 1991, and before January 1, 1992, and one and nine-tenths percent (1.9%) for taxable years beginning on or after January 1, 1992. (1.9%).~~ The tax rate ~~to~~ An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage ~~(except coverage, except in the case of marine and automobile policies) policies, shall be at the rate of one and thirty-three hundredths percent (1.33%) in addition to the above tax. (1.33%).~~ Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. ~~Effective July 1, 1988, the~~ The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Articles 65 and 66 of Chapter 58 corporations ~~corporations subject to Article 65 of Chapter 58 of the General Statutes shall be one-half of one percent (1/2 of 1%).~~

~~The taxes levied herein measured by premiums and/or membership dues shall be in lieu of all other taxes upon insurance companies except: fees, charges, and licenses under this Article, or as specified in Articles 1 through 64 of Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Articles 84 through 88 of Chapter 58 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.~~

(e) Report and Payment. -- ~~For the tax above levied as measured by gross premiums and/or gross collections from membership dues exclusive of receipts from cost plus plans the president, secretary, or other executive officer of each~~ Each insurance company and corporation subject to Article 65 ~~Articles 65 and 66 of Chapter 58 corporation of the General Statutes doing business in this State shall shall, within the first 15 days of March~~ March, file with the Commissioner of Insurance a full and accurate report of the total gross premiums as ~~above~~ defined in this section or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. ~~The report shall be in such form and contain such information as the~~ The Commissioner of Insurance ~~may specify, shall specify the form of the report and the information to be contained in the report. and the~~ The report shall be

verified by the oath of the company official transmitting ~~the same~~ it or by some principal officer at the home or head office of the company or association in this country. ~~At the time of making such report the taxes above levied with respect to the gross premiums or the gross collections from membership dues shall be paid to the Commissioner of Insurance. The taxes imposed by this section shall be remitted to the Commissioner of Insurance with the report. The provisions above shall likewise apply as This subsection applies to reports and taxes for any firm, corporation, or association firms, corporations, or associations exchanging reciprocal or interinsurance contracts, and said those reports and taxes shall be transmitted by their attorneys-in-fact.~~

(f) Installment Payments Required. -- Insurance companies and ~~Articles 65 and 66 corporations~~ subject to Article 65 of Chapter 58 ~~corporations of the General Statutes that are subject to the tax imposed by this section with and have a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.~~

The Commissioner of Insurance ~~may, by regulation, may~~ permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

If a company does not meet the installment payment requirement of this ~~section, subsection,~~ the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any overpayment shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. -- ~~The provisions as to reports and taxes as measured by gross premiums shall~~ This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

~~With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workers' Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the Insurance Commissioner as provided in G.S. 97-100(j)."~~

**Sec. 5.** Section 4 of this act becomes effective January 1, 1995, and applies, with respect to annuities and funding agreements, to premiums or other considerations paid for annuities or funding agreements on or after that date as well as to annuity or funding agreement benefits commenced on or after that date pursuant to an annuity or funding agreement purchased



before that date. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 825

## CHAPTER 601

## AN ACT CONCERNING IMPACT FEES BY THE TOWN OF GARNER.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Town of Garner may enact ordinances which provide, at the developer's option, for the payment of specified impact fees in installments, for a period of up to eight years, with interest on the unpaid balance of eight percent (8%) per annum, further providing that the unpaid balance becomes a lien on the property, which may be reduced to judgment and enforced by execution in the same fashion as unpaid assessment liens or unpaid tax liens.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1508

## CHAPTER 602

## AN ACT TO AUTHORIZE THE CITY OF LEXINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

*The General Assembly of North Carolina enacts:*

**Section 1.** Occupancy Tax.**(a) Authorization and Scope.**

The Lexington City Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of not more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. As provided in Chapter 453 of the 1993 Session Laws, if Davidson County is authorized to levy a room occupancy tax, the combined room occupancy tax rates for Davidson County and any city or town located in that county may not exceed six percent (6%).

**(b) Collection.**

Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of



the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) *Administration.*

The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) *Penalties.*

A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Lexington City Council has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) *Use of Tax Revenue.*

At least two-thirds of the proceeds of a tax levied under this section shall be used only to promote travel and tourism in the city and any remaining proceeds shall be used only for tourism-related expenditures.

The term "promote travel and tourism" means to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, host and conduct tours for travel industry representatives and travel writers, or engage in similar promotional activities that attract tourists or business travelers to the city; the term includes administrative expenses of the Lexington Tourism Development Authority incurred in engaging in the listed activities. The term "tourism-related expenditures" means expenditures that are designed to increase the use of lodging facilities in the city or attract tourists or business travelers to the city and the amount retained by the city for its costs in administering and collecting the tax; the term includes expenditures for the construction or maintenance of a visitors' center, a convention facility, a museum, or an historic attraction but does not include other capital expenditures.

(f) *Lexington Tourism Development Authority.*

The Lexington City Council shall, by resolution, establish the Lexington Tourism Development Authority and appoint members to the Authority. A resolution establishing the Authority shall state the number and qualifications of the members of the Authority, their terms of office, and their duties.

(g) *Distribution to Tourism Authority.*

The City of Lexington shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Lexington Tourism Development Authority. As used in this subsection, "net proceeds" means gross proceeds

less five percent (5%) of the gross proceeds or the cost to the city of administering and collecting the tax, whichever is greater. The Lexington Tourism Development Authority shall spend revenue remitted to it under this section in accordance with the restrictions set in subsection (e) of this section. The Lexington Tourism Development Authority shall report at the close of the fiscal year to the city council on its receipts and expenditures for the preceding year in such detail as the council may require.

(h) *Effective Date of Levy.*

A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(i) *Repeal.*

A tax levied under this section may be repealed by a resolution adopted by the Lexington City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1556

## CHAPTER 603

### AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF WINTERVILLE.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Charter of the Town of Winterville is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF WINTERVILLE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Winterville, North Carolina in Pitt County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Winterville', hereinafter at times referred to as the 'Town'.

"Sec. 1.2. *Powers.* The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Winterville specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, shall be

maintained permanently in the office of the Town Clerk and shall be available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Pitt County Register of Deeds, and the appropriate board of elections.

**"ARTICLE II. GOVERNING BODY.**

**"Sec. 2.1. Mayor and Board of Aldermen; Composition.** The Mayor and the Board of Aldermen, hereinafter referred to as the 'Board', shall be the governing body of the Town.

**"Sec. 2.2. Aldermen; Terms of Office.** Until the organizational meeting following the 1995 regular municipal election, the Board shall be composed of three members elected at large by all the qualified voters of the Town for four-year staggered terms or until their successors are elected and qualified. Beginning with the organizational meeting following the 1995 regular municipal elections, the Board shall be composed of five members elected at large by all the qualified voters of the Town for four-year staggered terms or until their successors are elected and qualified.

**"Sec. 2.3. Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the governing body, shall have the right to vote only when there is an equal division on any question or matter before the Board, and shall exercise the powers and duties conferred by law or as directed by the Board.

**"Sec. 2.4. Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Board.

**"Sec. 2.5. Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

**"Sec. 2.6. Voting Requirements; Quorum.** Official actions of the Board and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

**"Sec. 2.7. Compensation; Qualifications for Office; Vacancies.** The compensation and qualifications of the Mayor and Aldermen shall be fixed in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by appointment as provided in G.S. 160A-63.

**"ARTICLE III. ELECTIONS.**

**"Sec. 3.1. Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

**"Sec. 3.2. Election of Mayor.** A Mayor shall be elected in 1997 and in the regular municipal election every four year thereafter.

"Sec. 3.3. *Election of Aldermen.* Four Aldermen shall be elected at the regular municipal election in 1995. The three candidates receiving the highest number of votes shall be elected to four-year terms, and the candidate receiving the next highest number of votes shall be elected to a two-year term. In 1997, and every four years thereafter, two Aldermen shall be elected to four-year terms. In 1999, and every four years thereafter, three Aldermen shall be elected to four-year terms.

"Sec. 3.4. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. *Form of Government.* The Town shall operate under the mayor-council form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Clerk.* The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Board may direct.

"Sec. 4.3. *Town Attorney.* The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials and perform other duties required by law or as the Board may direct.

"Sec. 4.4. *Other Administrative Officers and Employees.* The Board may authorize other positions and may organize the Town government as deemed appropriate, subject to the requirements of general law."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Winterville and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 95, Private Laws of 1897

Chapter 256, Private Laws of 1899

Chapter 423, Private Laws of 1907

Chapter 47, Private Laws of 1909

Chapter 198, Private Laws of 1917

Chapter 576, Public-Local Laws of 1939, except validations are not repealed

Chapter 183, Session Laws of 1943

Chapter 345, Session Laws of 1955

Chapter 149, Session Laws of 1957

Chapter 355, Session Laws of 1959

Chapter 556, Session Laws of 1965

Chapter 857, Session Laws of 1973, except as to Section 3

Chapter 277, Session Laws of 1975

Chapter 356, Session Laws of 1989.

**Sec. 5.** The Mayor and Aldermen serving on the date of ratification of this act shall serve until the expiration of their terms. Thereafter those offices shall be filed as provided in Article II and III of the Charter contained in Section 1 of this act.

**Sec. 6.** This act does not affect any rights or interests which arose under any provisions repealed by this act.

**Sec. 7.** All existing ordinances, resolutions and other provisions of the Town of Winterville not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

**Sec. 8.** No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

**Sec. 9.** If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 10.** Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

**Sec. 11.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1557

## CHAPTER 604

### AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE TOWN OF GRIFTON CERTAIN DESCRIBED TERRITORY IN LENOIR COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** The following described property is removed from the corporate limits of the Town of Grifton:

Being in Contentnea Township of Lenoir County.

Beginning at a point located where the centerline of NCSR 1800 intersects the centerline of the Seaboard Coastline Railroad, said point being located S 37-38-15 W 221.72' as measured along the centerline of the Seaboard Coastline Railroad from a point in the centerline of the Seaboard Coastline Railroad at the southern abutment of the steel bridge where the Seaboard Coastline Railroad crosses Contentnea Creek. From the above described beginning, so located, running thence as follows:

With the centerline of NCSR 1800 and as a new town limit line, S 56-35-58 E 88.15', S 58-24-51 E 100.05', S 60-29-33 E 100.06', S 62-34-14 E 100.12', S 66-08-57 E 50.02', S 70-17-14 E 50.04', S 75-17-11 E 50.01', S 79-36-22 E 50.03', S 83-19-36 E 50.02', S 86-53-03 E 50.04', S 89-08-04 E 50.01', S 89-50-52 E 100.05', S 86-29-57 E 32.78', S 89-09-55 E



79.46', S 85-35-35 E 50.00', S 82-21-35 E 50.00', S 78-56-15 E 50.0', S 75-40-25 E 50.00', S 71-58-35 E 50.00', S 67-37-00 E 50.00' and S 63-07-30 E 43.06', thence leaving the centerline of NCSR 1800 and as an abandoned town limit line, S 80-08-15 W 805.50' and N 55-06-45 W 636.00' to a point in the town limit line in the centerline of the Seaboard Coastline Railroad, thence with the centerline of the Seaboard Coastline Railroad and as a town limit line, N 37-38-15 E 162.28' to the point of beginning containing 5.035 acres.

**Sec. 2.** This act becomes effective June 30, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1591

## CHAPTER 605

AN ACT TO PROVIDE THAT THE CITY OF NEW BERN MAY NOT MAKE INVOLUNTARY ANNEXATIONS ACROSS THE TRENT RIVER, AND TO EXEMPT THAT CITY FROM LIMITATIONS ON THE TOTAL AREA OF SATELLITE ANNEXATIONS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes do not apply to annexations by the City of New Bern of any area lying beyond the Trent River, that is, which lies south or southeast of that river.

**Sec. 2.** Nothing in this act restricts the authority of the City of New Bern to make annexations under Parts 1 or 4 of Article 4A of Chapter 160A of the General Statutes.

**Sec. 3.** G.S. 160A-58.1(b)(5) does not apply to the City of New Bern.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1680

## CHAPTER 606

AN ACT ENABLING THE COUNTY OF DAVIDSON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE OPERATION AND MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY OF DAVIDSON FOR THE CITIZENS OF DAVIDSON COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** There is hereby created the "Davidson County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by future acts of the General Assembly.

**Sec. 2.** The Airport Authority shall consist of five members who shall be resident voters of Davidson County and who shall be appointed by the Davidson County Board of Commissioners, and who shall meet quarterly at

a place determined by the Chairman of the Airport Authority. The Airport Authority shall consist of five members who shall be appointed to staggered terms of four years by the Davidson County Board of Commissioners. The initial terms of office of the members of the Airport Authority shall be as follows: two members to be appointed to a term of four years, three members to be appointed to a term of two years. Thereafter, all terms shall be four years. After the initial term, any member may be reappointed to two more successive terms, after which that member may not be reappointed to the Airport Authority except after the lapse of two years following the most recent term served. In the event the Davidson County Board of Commissioners should appoint one of the members of that Board as a member of the Airport Authority, the membership shall not constitute double officeholding within the meaning of Article VI, Section 9 of the Constitution of North Carolina. Each of the members and their successors so appointed shall take and subscribe before the Clerk to the Board of Commissioners for the County of Davidson, an oath of office and file the same with the County Commissioners of Davidson County. Any member of the Airport Authority may be removed, for cause, by the Davidson County Board of Commissioners. The Davidson County Board of Commissioners, may, at the request of the Airport Authority, increase membership to no more than nine members or decrease the membership to no less than five members. The Davidson County Board of Commissioners shall consult with the Airport Authority in filling vacancies on the Airport Authority.

Sec. 3. The members shall, for the purpose of doing business, constitute a Board of Directors, which shall adopt suitable bylaws for its management. The members of the Board shall receive compensation or per diem by unanimous agreement of the Board of County Commissioners. Members shall be allowed and paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority.

Sec. 4. The Airport Authority shall constitute a body both corporate and politic, and may:

- (1) Purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate the Davidson County Airport for the use of airplanes and other aircraft, and all facilities incidental to the operation of such airport, within the limits of Davidson County; and for any of such purposes, to purchase, acquire, own, hold, lease, and/or operate real or personal property;
- (2) Purchase real or personal property;
- (3) Sue or be sued in the name of the Airport Authority, make contracts necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise, any existing lease, leasehold right, or other interest in any existing airport located in Davidson County;
- (4) Charge and collect reasonable and adequate fees, royalties, rents, or other charges for the use of the property owned, leased, or otherwise controlled or operated by the Airport Authority or for services rendered in the operation thereof;

- (5) Make all reasonable rules and regulations as it deems necessary for the proper maintenance, use, operation, and control of any airport or airport facilities owned, leased, or otherwise controlled by the Airport Authority; to provide penalties for the violation of such rules and regulations; provided the rules and regulations and penalties be not in conflict with the laws of the State of North Carolina and the rules and regulations of the Federal Aviation Administration;
- (6) Sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, but no sale of real property shall be made without the approval of the Board of County Commissioners of Davidson County and the Federal Aviation Administration;
- (7) Purchase such insurance as the Airport Authority shall deem necessary;
- (8) Deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds;
- (9) Operate, own, lease, control, regulate, or grant to others a lease; not to exceed 25 years, to operate on any airport premises, restaurants, snack bars, and vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion pictures, personal service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation;
- (10) Possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina;
- (11) Issue revenue bonds pursuant to Article 5 of Chapter 159 of the General Statutes;
- (12) Have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes; or
- (13) Have a corporate seal which may be altered at will.

Sec. 5. Any lands acquired, owned, controlled, and occupied by the Airport Authority shall, and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

Sec. 6. The Airport Authority shall make an annual report to the Davidson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall be regarded as the corporate instrumentality and agent for Davidson County for the purpose of operating, maintaining, and developing airport facilities in Davidson County, but it shall not have the power to pledge the credit of Davidson County or any subdivision thereof, or to

impose any obligation upon Davidson County or any subdivision thereof, except and when such power is expressly granted by statute.

**Sec. 7.** All rights and powers given and granted to the counties or municipalities by the statutes of North Carolina, which may now be in effect or enacted in the future relating to the development, regulation, and control of county airports and the regulation of aircraft, are vested in the Airport Authority, and Davidson County will delegate its powers under those acts to the Airport Authority and the Airport Authority shall control, regulate, and provide for the development of aviation in Davidson County.

**Sec. 8.** The Airport Authority may employ agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of this act.

**Sec. 9.** If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, that judgment shall not affect, impair, or invalidate the remaining provisions thereof, but that judgment shall be confined in its operation to the specific provisions held invalid, and the inapplicability of invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way to the applicability or validity in any other instance of that section, clause, sentence, or part.

**Sec. 10.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1687

## CHAPTER 607

AN ACT TO ANNEX A DESCRIBED PIECE OF PROPERTY TO THE TOWN OF LAKE LURE AND REMOVE ANY PORTION OF THAT PROPERTY FROM CHIMNEY ROCK VILLAGE.

*The General Assembly of North Carolina enacts:*

**Section 1.** The corporate limits of the Town of Lake Lure are extended to include the following described property, and any part of the property which may be in the corporate limits of Chimney Rock Village is excluded from the corporate limits of Chimney Rock Village:

Beginning at a point which is a PK Nail Set in pavement at the intersection of the existing Lake Lure Town limits line and the Verlon M. Hutto line at S79 degrees, 51' 17"E; thence in a northerly direction following the existing Town limits line N13 degrees, 42', 51"W, for a distance of 85 feet to a point; thence in a southwesterly direction S74 degrees, 38', 12"W, for a distance of 30.5 feet to a point; thence in a southeasterly direction S16 degrees, 17', 20"E, for a distance of 72.47 feet to a railroad spike; thence in a southeasterly direction S79 degrees, 51', 17"E, for a distance of 29.04 feet to PK Nail Set in pavement and point of beginning.

**Sec. 2.** This act becomes effective June 30, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1704

## CHAPTER 608

AN ACT TO PERMIT THE ACQUISITION OF PROPERTY FOR THE  
DUPLIN COUNTY AIRPORT BY EMINENT DOMAIN WITH  
IMMEDIATE VESTING OF TITLE AND RIGHT OF POSSESSION IN  
THE COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), ~~(2) or (3)~~, (2), (3), or (4) or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

**Sec. 2.** This act applies to Duplin County only.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1722

## CHAPTER 609

AN ACT TO PERMIT THE CITY OF GREENVILLE TO USE WHEEL  
LOCKS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The City Council of the City of Greenville may provide, by ordinance, for the use of wheel locks on illegally parked vehicles for which there are three or more unpaid parking tickets which are at least 90 days overdue. The ordinance shall provide for notice or warning to be affixed to the vehicle, immobilization, towing, impoundment, appeal hearing, an immobilization fee not to exceed fifty dollars (\$50.00), and charges for towing and storage. The City of Greenville shall not be responsible for any damage to an immobilized illegally parked vehicle resulting from unauthorized attempts to free or move that vehicle.

**Sec. 2.** This act applies to the City of Greenville only.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.



H.B. 1900

## CHAPTER 610

AN ACT TO PROVIDE FOR AN ELECTION WITHIN THE DUCK AREA BEAUTIFICATION DISTRICT OF DARE COUNTY TO AUTHORIZE THE LEVY AND COLLECTION OF AD VALOREM PROPERTY TAXES FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING SIDEWALKS WITHIN THAT DISTRICT.

*The General Assembly of North Carolina enacts:*

**Section 1.** Election Authorized. -- The Dare County Board of Commissioners may call an election in the Duck Area Beautification District established pursuant to Chapter 991 of the 1983 Session Laws to submit to the voters in the district the single issue of authorizing the annual levy and collection of a special ad valorem tax on all taxable property in the district to protect the general public by providing for the construction and maintenance of sidewalks within the district. The Dare County Board of Elections shall conduct this election in accordance with Chapter 163 of the General Statutes and shall certify the result of the election to the Dare County Board of Commissioners.

**Sec. 2.** Ballot. -- The Dare County Board of Elections shall prepare ballots in the following form for an election called for under Section 1 of this act:

[ ] FOR [ ] AGAINST

The levy of an ad valorem tax not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation each tax year for two consecutive years to protect the general public of the Duck Area Beautification District by constructing sidewalks within the district, and thereafter the annual levy of an ad valorem tax not to exceed one cent (1¢) for each one hundred dollars (\$100.00) taxable valuation to maintain these sidewalks.

**Sec. 3.** Tax Levy. -- If a majority of the qualified voters voting on the question in an election called under Section 1 of this act vote in favor of authorizing the levy and collection of ad valorem taxes in the district, the Dare County Board of Commissioners may levy the ad valorem tax on all taxable property in the district in an amount the Board considers necessary to construct the sidewalks within the district not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation of property for two consecutive years beginning no later than the second fiscal year that begins after the election, and thereafter the Board may annually levy an ad valorem tax in the amount necessary to maintain the sidewalks but not to exceed one cent (1¢) for each one hundred dollars (\$100.00) taxable valuation of property. The proceeds of these taxes shall be used only to construct and maintain the sidewalks within the district.

**Sec. 4.** Governing Body. -- All matters relative to the construction and maintenance of the sidewalks shall be decided by the Dare County Board of Commissioners, which is the governing body of the Duck Area Beautification District as provided in Chapter 991 of the 1983 Session Laws.

**Sec. 5.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1904

## CHAPTER 611

AN ACT TO ALLOW MACON AND HAYWOOD COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION AND TO AUTHORIZE THE MACON AND HAYWOOD COUNTY BOARDS OF EDUCATION TO CONVEY PROPERTY TO THEIR COUNTIES IN CONNECTION WITH IMPROVEMENTS AND REPAIR OF THE PROPERTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, reads as rewritten:

"Sec. 2. This act applies only to Macon, Bladen, Cabarrus, Carteret, Columbus, Duplin, Franklin, Haywood, Iredell, Pender, Richmond, Rowan, Sampson, and Stanly Counties."

**Section 1.1.** G.S. 153A-157 is amended by adding a new subsection to read:

"(a1) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

**Sec. 2.** Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

**Sec. 3.** Sections 1.1 and 2 of this act apply only to Macon and Haywood Counties and to local boards of education for school administrative units in or for Macon and Haywood Counties. Section 2 of this act applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1926

## CHAPTER 612

AN ACT TO ALLOW BRUNSWICK COUNTY TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARD OF EDUCATION, AND TO PROVIDE FOR THE USE OF COUNTY OWNED PROPERTY BY SCHOOLS IN CERTAIN COUNTIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, and as codified as G.S. 153A-157, reads as rewritten:

"§ 153A-157. Power to acquire property in certain counties.

(a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any other lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) This section applies to Bladen, Brunswick, Cabarrus, Carteret, Columbus, Duplin, Franklin, Iredell, Johnston, Pender, Richmond, Rowan, Sampson, and Stanly Counties."

Sec. 1.1. G.S. 153A-157, as amended by Section 1 of this act, is amended by adding a new subsection to read:

"(a1) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

Sec. 2. Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are located.

Sec. 3. Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

Sec. 4. Sections 1.1, 2, and 3 of this act apply only to Brunswick County and to local boards of education for school administrative units in or for the county. Section 3 of this act applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1927

## CHAPTER 613

AN ACT TO ALLOW SAMPSON COUNTY TO ACQUIRE PROPERTY FOR USE BY SAMPSON COMMUNITY COLLEGE AND TO AUTHORIZE THE SAMPSON COMMUNITY COLLEGE BOARD OF TRUSTEES TO CONVEY PROPERTY TO THE COUNTY IN CONNECTION WITH IMPROVEMENT AND REPAIR OF THE PROPERTY.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 153A-158 reads as rewritten:

"§ 153A-158. Power to acquire property.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the ~~county~~ county or a community college within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a community college within the county only upon request of the board of trustees of the community college and after a public hearing by the board of county commissioners. A notice of the public hearing shall be published at least once at least 10 days before the date fixed for the hearing. A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a community college within the county."

Sec. 2. Notwithstanding the provisions of G.S. 115D-15 and G.S. 160A-274, the board of trustees of a community college may lease or sell any of its property to the county in which the property is located for any price negotiated between the two boards, subject to prior approval by the State Board of Community Colleges. A community college may lease or sell property pursuant to this section only in connection with additions, improvements, renovations, or repairs to all or part of the property.

Sec. 3. This act applies only to Sampson County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1928

## CHAPTER 614

AN ACT TO REMOVE THE SUNSET ON THE LAW ALLOWING RICHMOND AND SAMPSON COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION, AND TO AUTHORIZE LOCAL BOARDS OF EDUCATION IN OR FOR SAMPSON COUNTY TO CONVEY PROPERTY TO THE COUNTY IN CONNECTION WITH IMPROVEMENT AND REPAIR OF THE PROPERTY.

*The General Assembly of North Carolina enacts:*

Section 1. Section 3 of Chapter 533 of the 1991 Session Laws reads as rewritten:

"Sec. 3. This act is effective upon ~~ratification and expires on January 1, 1995.~~ ratification."

Sec. 2. G.S. 153A-157 is amended by adding a new subsection to read:

"(a) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

Sec. 3. Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple

by one or more counties in which the local school administrative units are located.

**Sec. 4.** Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

**Sec. 5.** Section 2 of this act applies only to Richmond and Sampson Counties. Sections 3 and 4 of this act apply only to Sampson County and to local boards of education for school administrative units in or for the county. Section 4 of this act applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1979

## CHAPTER 615

### AN ACT TO ADVANCE THE EFFECTIVE DATE OF AN ACT AUTHORIZING THE MERGER OF THE TOWNS OF HAZELWOOD AND WAYNESVILLE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 5 of Chapter 353 of the 1993 Session Laws reads as rewritten:

"Sec. 5. This act becomes effective ~~January 1, 1996.~~ July 1, 1994."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1997

## CHAPTER 616

### AN ACT RELATING TO INVESTMENTS OF THE CITY OF DURHAM.

*The General Assembly of North Carolina enacts:*

**Section 1.** Part 3 of Article 3 of Chapter 159 of the General Statutes is amended by adding the following new section to read:

"§ 159-30.1. *Investments by City of Durham.*

Notwithstanding anything in this Part 3 to the contrary, a city may contract with any person, association, or corporation to invest, supervise, and manage the investment of idle funds of the city in one or more of the types of securities or other investments authorized in G.S. 159-30 and to purchase, sell, and exchange such securities or other investments on behalf of the city."

**Sec. 2.** This act applies only to the City of Durham.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.



H.B. 2012

## CHAPTER 617

AN ACT TO AUTHORIZE THE VILLAGE OF BALD HEAD ISLAND TO INCREASE ITS ROOM OCCUPANCY TAX FROM THREE PERCENT TO SIX PERCENT, TO MODIFY THE EXISTING BALD HEAD ISLAND ROOM OCCUPANCY TAX, AND TO ALLOW COLUMBUS COUNTY TO CREATE FIRE PROTECTION DISTRICTS IN WHICH FIRE PROTECTION IS FUNDED BY FEES RATHER THAN TAXES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 664 of the 1991 Session Laws reads as rewritten:

"Sec. 2. Bald Head Island Occupancy Tax. (a) Authorization and Scope. The Village Council of the Village of Bald Head Island may by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the village that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the village that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Village Council of the Village of Bald Head Island may, by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto, levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Village of Bald Head Island may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(a2) Maximum Rate. If Brunswick County is authorized to levy a room occupancy tax, the combined room occupancy tax rates for Brunswick County and any city or town located in that county may not exceed six percent (6%).

(b) Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the village. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The village shall design, print, and furnish to all appropriate businesses in the village the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount

remitted to the village a discount equal to the discount the State allows the operator for State sales and use tax.

(c) Administration. The village shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the village finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the village. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the village finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return or pay the tax as required by this act ~~shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The village council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both, is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Village Council of Bald Head Island has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Use of Proceeds. The village may use the proceeds of a tax levied under this act only to promote tourism in the village and for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the village on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the village to attract and provide for tourists.

(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) ~~Repeal.~~ Repeal and Reduction. The Village Council of the Village of Bald Head Island may by resolution repeal or reduce a tax levied under this act. Repeal or reduction of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal or reduction resolution was adopted. Repeal or reduction of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the ~~repeal,~~ repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the ~~repeal,~~ repeal or reduction."

Sec. 2. Section 2 of Chapter 883 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act applies to Columbus and Union County Counties only."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2030

## CHAPTER 618

AN ACT TO ANNEX A CERTAIN DESCRIBED AREA TO THE CORPORATE LIMITS OF THE TOWN OF CARTHAGE, AND TO PRESCRIBE THAT THE BOUNDARIES OF ANOTHER AREA ARE PRIMARY CORPORATE LIMITS OF ONLY THE TOWN OF SOUTHERN PINES.

*The General Assembly of North Carolina enacts:*

Section 1. The corporate limits of the Town of Carthage are extended to include the following described area:

BEGINNING at a new iron pipe set in the November 1988, which is at the common corner of the Blanche tract recorded in DB 551, P 680, the Blanche tract recorded in DB 552, P 883 and the Moree' tract recorded in DB 541, P 679 and runs thence as the line of Moree' S 88-54 W 119.12 feet to an iron pipe; thence S 19-48 W 275.04 feet; thence S 19-50 W 360.00 feet; thence S 27-17 E 1,291.87 feet; thence S 26-29 E 399.89 feet; thence S 26-42 E 400.13 feet; thence S 26-31 E 298.45 feet to a new iron pipe in the northeast right of way line of NCSR 1838; thence as said right of way line, N 69-09 E 362.41 feet; thence N 61-48 E 287.64 feet; thence N 44-50 E 231.44 feet to the southwest line of Bishop; thence as the line of Bishop, N 27-54 W 2,603.13 feet; thence as the line of Bishop, S 82-37 E 493.55 feet; thence S 82-37 E about 580 feet to the northeast corner of a 17.97 acre tract; thence as the northeast line of said tract in a southeast direction, about 670 feet to the northwest corner of Garrison (DB 154, P 420); thence as the Garrison line, S 77-23 E 156.06 feet; thence S 70-34 E 165.27 feet; thence S 35-38 E 405.20 feet to an existing iron pipe in the northwest right of way line of NCSR 1838; thence as that line N 52-16 E 145.94 feet; thence N 74-38 E 432.63 feet to the southwest corner of McCaskill; thence as the McCaskill line, N 02-59 E 502.65 feet to a concrete monument on a high ledge on the south side of a gravel quarry pond; thence N 79-04 E 308.00 feet to another concrete monument; thence

N 79-07 E 200.23 feet to a concrete monument, a corner with McCallum; thence as that line, N 18-32 E 1,051.58 feet to a concrete monument in the line of Wayne Robbins; thence as the Robbins line, S 70-27 W 1,248.46 feet to an iron pipe; thence N 11-34 W 273.39 feet to an iron pipe; thence as an old road, N 08-16 W 416.3 feet; thence N 06-53 E 153.66 feet; thence N 18-08 E 127.25 feet to the Little River; thence as the River, the following courses; S 75-44 E 197.85 feet, N 71-17 E 445.79 feet, S 82-00 E 110.04 feet, N 20-43 E 103.21 feet, S 46-49 E 19.53 feet, N 29-48 E 146.18 feet, N 77-29 E 194.66 feet, S 56-41 E 213.06 feet, S 82-36 E 161.36 feet, N 75-01 E 268.12 feet, N 71-37 E 124.26 feet, N 20-20 E 185.46 feet, N 22-50 E 189.23 feet, N 14-21 E 218.44 feet, N 66-13 W 119.18 feet, N 32-35 E 180.50 feet, N 65-36 218.89 feet, N 67-45 E 655.06 feet to the center of the Hwy 22 bridge over Little River; thence as the center line of said road the following courses S 16-04 E 186.97 feet, S 16-05 E 238.59 feet, S 15-02 E 175.06 feet, S 11-58 E 145.74 feet, S 08-23 E 151.62 feet, S 05-28 E 173.37 feet, S 03-01 W 182.82 feet, S 00-37 E 181.92 feet, S 03-22 W 194.32 feet, S 03-44 W 130.07 feet; thence leaving the road, to the west, N 62-24 W 161.03 feet, N 58-48 W 114.47 feet; thence N 83-59 W 236.74 feet; thence S 89-21 W 305.19 feet; thence S 86-47 W 231.79 feet to a corner with Robbins; thence S 16-29 W 23.42 feet to a corner with McCallum; thence as the McCallum line, S 06-32 W 408.40 feet; thence S 03-27 W 177.15 feet; N 77-05 W 965.29 feet to a concrete monument in the west right of way line of Hwy 22; thence N 58-26 E 71.79 feet to an iron pipe on the east right of way line of Hwy 22; thence as that east line, S 01-34 W 100.00 feet; thence S 00-11 E 100.00 feet; thence S 03-58 E 100.00 feet; S 09-03 E 119.05 feet; thence S 61-09 E 115.43 feet; thence as the north line of NCSR 1838, N 69-06 E 889.40 feet to a right of way marker; thence N 70-03 E 254.79 feet; thence N 00-01 E 639.13 feet to a concrete monument; thence N 89-49 W 100.73 feet; thence N 07-13 E 1,780.59 feet, crossing Little River, to a concrete monument thence to and with the south line of Paul Green, N 82-52 W 1,759.74 feet to an iron stake inside the right of way line of Hwy 22; thence S 64-41 W 72.84 feet to an iron pipe in the pasture; thence N 05-34 E 1,126.63 feet to an iron pipe; thence N 27-19 W 156.75 feet; thence N 07-21 W 802.14 feet; thence N 88-28 W 9.98 feet to a US Corps of Engineers Monument (TP 17-1965); thence N 88-28 W 308.82 feet to a concrete monument; thence S 61-35 W 1,693.90 feet to a concrete monument on the southwest side of Wads Creek; thence up Wads Creek the following courses, N 55-55 W 767.1 feet, N 32-45 W 551.61 feet, N 82-45 W 696.00 feet, N 40-05 W 362.05 feet, N 03-14 E 882.59 feet, N 21-43 W 355.66 feet to a concrete monument in the east right of way line of NCSR 1835; thence N 66-58 W 30.00 feet to the center of said road; thence as the center of said road the following courses, S 20-40 W 398.20 feet, S 12-36 W 605.64 feet, S 17-30 W 309.99 feet, S 22-29 W 332.03 feet, S 28-23 W 206.51 feet, S 33-17 W 153.77 feet to a rail road spike in the center of said road; thence leaving NCSR 1835, N 87-47 W 84.52 feet to a concrete monument; thence N 87-30 W 244.92 feet to an iron pipe 26 feet east of the centerline of the north bound lanes of US Hwy 15 & 501; thence S 16-29 W 274.12 feet; thence S 15-00 W 620.40 feet to an iron pipe (located S 07-24-12 W 511.39



feet from NCSG monument "LEAN") thence S 11-24 W 368.29 feet; thence S 06-00 W 62.75 feet; thence S 06-00 W 599.70 feet; thence S 06-00 W 1,901.69 feet; thence S 05-40 W 830.82 feet to an old stake on the south side of Little River; thence S 87-11 E about 700 feet to the northwest corner of the Blanche tract recorded in DB 551, P 680; thence S 08-44 W 493.76 feet to the north side of an old road; thence as the north side of said road, N 78-47 W about 140 feet; thence S 87-12 W about 230 feet to the southeast corner of the Moore Co. L.E.O. tract recorded in DB 480, P 950; thence as the south line of said L.E.O. tract, S 89-46 W 149.98 feet; thence N 78-38 W 204.65 feet; thence N 89-46 about 930 feet to the east right of way of US Hwy 15 & 501; thence as the Hwy, S 24-47 W about 61 feet to the corner with Moree'; thence as the north line of Moree', S 89-30 E about 940 feet; thence S 79-25 E 219.04 feet; thence N 89-35 E 261.52 feet; thence N 87-12 E 110.33 feet; thence S 78-47 E 140.84 feet; thence S 03-44 W 480.40 feet to the BEGINNING, containing all the land in Moore County, North Carolina, now owned by Robert Blanche. See deed references DB 504, P 20; DB 551, P 680; DB 552, P 883; and perhaps others.

**Sec. 2.** The boundaries of the Town of Carthage annexed pursuant to Chapter 465 of the 1989 Session Laws shall be considered to be the municipal boundary of only the Town of Southern Pines in applying G.S. 160A-47 and G.S. 160A-48, and shall be considered the primary corporate limits of only the Town of Southern Pines in applying G.S. 160A-58.1 other than G.S. 160A-58.1(b)(5).

**Sec. 3.** This act becomes effective June 30, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 872

## CHAPTER 619

# AN ACT TO PROVIDE THAT FAMILY CARE HOMES SHALL BE TREATED AS RESIDENCES FOR PURPOSES IN ADDITION TO ZONING.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 168-22 reads as rewritten:

"§ 168-22. ~~Zoning; family care home.~~ Family care home; zoning and other purposes.

(a) A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts of all political subdivisions. No political subdivision may require that a family care home, its owner, or operator obtain, because of the use, a conditional use permit, special use permit, special exception or variance from any such zoning ordinance or plan; provided, however, that a political subdivision may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

(b) A family care home shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable



television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements, and for purposes of classification for insurance."

**Sec. 2.** This act becomes effective October 1, 1994, and applies to charges or assessments imposed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1323

**CHAPTER 620**

# **AN ACT TO INCORPORATE THE VILLAGE OF LAKE PARK IN UNION COUNTY.**

*The General Assembly of North Carolina enacts:*

**Section 1.** A charter for the Village of Lake Park is enacted to read:  
**"CHARTER OF VILLAGE OF LAKE PARK.**

## **"CHAPTER I.**

### **"INCORPORATION AND CORPORATE POWERS.**

"Section 1-1. *Incorporation and Corporate Powers.* The inhabitants of the Village of Lake Park are a body corporate and politic under the name 'Village of Lake Park'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

## **"CHAPTER II.**

### **"CORPORATE BOUNDARIES.**

"Sec. 2-1. *Village Boundaries.* Until modified in accordance with the law, the boundaries of the Village of Lake Park are as follows:

BEGINNING at a point in the centerline of the intersection of Unionville - Indian Trail Road (S.R. 1367) and Faith Church Road (S.R. 1518); thence running with the centerline of Unionville - Indian Trail Road in a westerly direction the following five calls: 1) N 74-41-00 W 144.63 feet; 2) N 83-28-32 W 154.74 feet; 3) N 83-19-39 W 66.45 feet; 4) N 84-04-34 W 151.14 feet; 5) N 85-22-36 W 77.90 feet; thence leaving said road and running N 12-22-54 E 2038.88 feet; thence N 12-22-54 E 2038.88 feet; thence N 85-28-22 W 552.52 feet; thence N 18-40-47 E 523.40 feet; thence N 25-58-20 W 99.06 feet; thence N 33-35-11 W 263.90 feet; thence N 16-43-25 W 98.36 feet; S 59-24-09 W 1616.42 feet to an existing iron having North Carolina Grid Coordinates on the NAD 1927 of N 488,719.44 feet, E 1,508,175.69 feet; thence N 17-58-32 W 1006.45 feet; thence N 25-50-09 W 1149.77 feet to an existing iron at the end of Kennedy Drive in Rosemary Park as recorded in the Union County Public Registry in Map Book 4 at page 207; thence N 28-46-00 E 178.14 feet; thence N 28-47-29 E 205.54 feet to an iron in the rear of Lot 32 of Rosemary Park and Lot 24 of Green Meadows Subdivision as recorded in Map Book 4 at page 203; thence S 22-30-08 E 484.70 feet; thence N 67-20-51 E 864.91 feet; thence N 29-04-39 E (passing the end of Third Avenue) 210.03 feet to an iron on the easterly right of way line of Third Avenue; thence with the easterly right of way line of Third Avenue N 60-57-37 W 30.06 feet; thence continuing with Third Avenue and the arc of a circular curve to the right having a

radius of 373.00 feet for an arc distance of 92.29 feet to the point of intersection of the southerly right of way line of West Street, said curve also having a chord bearing and distance of N 53-52-17 W 92.05 feet; thence with the southerly right of way line of West Street N 48-21-02 E 145.67 feet to an iron at the end of said street; thence N 41-40-04 W 60.10 feet to an iron on the westerly right of way line of West Street; thence N 22-44-52 W 163.30 feet; thence N 17-38-48 E 715.01 feet to an iron in the southerly right of way line of Carole Avenue (S.R. 1567); thence with the southerly right of way line of Carole Avenue S 74-36-39 E 169.84 feet; thence S 86-47-39 E 477.21 feet; thence N 84-25-04 E 396.22 feet to an iron at the end of Carole Avenue; thence N 01-49-59 W (passing the end of Carole Avenue) 462.35 feet to an iron marking the rear corners of Lots 19, 20, and 21 of Acorn Woods Subdivision as recorded in Map Book 5 at Pages 41 and 134; thence N 74-55-45 E 999.32 feet; thence N 76-36-31 E 255.31 feet; thence N 77-58-24 E 61.55 feet; thence S 14-19-25 W 895.83 feet; thence S 64-10-12 E 444.86 feet; thence S 40-32-01 E 165.24 feet; thence S 41-11-09 E 1009.77 feet; thence N 44-26-43 E 554.42 feet; thence N 81-39-22 E 180.06 feet; thence S 37-24-04 E 482.98 feet to an iron pipe in Faith Church Road right-of-way; thence S 39-23-28 E (passing an iron pin on the easterly right of way line of Faith Church Road at 21.29 feet) for a total distance of 850.37 feet to a stone; thence S 54-35-11 E 932.38 feet; thence S 59-23-32 E 102.32 feet; thence S 30-33-37 W 616.58 feet; thence S 51-50-23 E 148.51 feet; thence S 02-23-14 W 197.98 feet; thence S 40-14-50 W 489.56 feet; thence S 40-43-02 W 1,492.58 feet to a stone; thence N 74-28-34 W 659.78 feet; thence N 40-00-17 W 266.75 feet; thence N 40-01-08 W 926.90 feet to a point in the centerline of Faith Church Road; thence N 40-00-21 W 1,239.16 feet; thence S 72-59-52 W 346.85 feet; thence S 40-00-11 E 1,490.30 feet to a point in the centerline of Faith Church Road; thence with the centerline of Faith Church Road S 30-52-26 W 433.24 feet; thence S 26-49-38 W 207.25 feet; thence S 27-25-47 W 164.10 feet; thence leaving the centerline of Faith Church Road, S 57-10-20 E 822.61 feet; thence S 32-35-52 W 316.80 feet; thence N 57-12-10 W 399.95 feet; thence S 32-32-57 W 430.71 feet; thence S 61-35-32 E 351.08 feet; thence S 32-27-37 W 346.34 feet to a point in the centerline of Unionville Indian Trail Road; thence running with the centerline of said road in a westerly direction the following three calls: 1) N 58-08-30 W 374.62 feet; 2) N 59-47-59 W 123.84 feet; 3) N 65-38-02 W 123.34 feet to the point of BEGINNING and containing 481.07 acres, more or less, as compiled from various surveys by Edward L. Killough, N.C.R.L.S. L-1519.

### "CHAPTER III

#### "GOVERNING BODY.

"Sec. 3-1. *Structure of Governing Body; Number of Members.* The governing body of Village of Lake Park is the Village Council, which has five members, and the Mayor.

"Sec. 3-2. *Manner of Electing Council.* The qualified voters of the entire Village elect the members of the Council.

"Sec. 3-3. *Initial Council.* The initial Village Council consists of Dara Young, Robert Huff, Sanford Crane, David Ramsey, and Orville Link. They shall serve from the effective date of this Charter until the

organizational meeting of the Village Council held after the initial general election on November 8, 1994. The initial general election shall be held under the same rules as municipal elections generally, except that it shall be held in an even-numbered year, and if absentee voting is allowed, the schedule shall be the same as for the statewide general election held on that date. Except for the initial Village Council, the qualified voters of the entire Village elect the Council.

"Sec. 3-4. *Term of Office of Council Members.* Except as provided by this section, members of the Council are elected to four-year terms. At the initial election in 1994, the two highest vote getters shall be elected to three-year terms and the next three highest vote getters shall be elected to one-year terms. In 1995 and quadrennially thereafter, three members of the Council shall be elected for four-year terms. In 1997 and quadrennially thereafter, two members of the Council shall be elected for four-year terms.

"Sec. 3-5. *Election of Mayor; Term of Office.* Except as provided by this section, the Mayor is elected for two-year terms by the qualified voters of the entire Village. The initial Mayor is Scott Howard who shall serve from the effective date of this Charter until the organizational meeting of the Village Council held after the initial general election on November 8, 1994. He may call the initial meeting of the Village Council. At the initial election in 1994, a Mayor shall be elected for a one-year term. The initial general election shall be held under the same rules as municipal elections generally, except that it shall be held in an even-numbered year, and if absentee voting is allowed, the schedule shall be the same as for the statewide general election held on that date. The Mayor may only vote to break a tie.

#### "CHAPTER IV.

#### "ELECTIONS.

"Sec. 4-1. *Conduct of Village Elections.* Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

#### "CHAPTER V.

#### "ADMINISTRATION.

"Sec. 5-1. *Village to Operate Under Mayor-Council Plan.* The Village of Lake Park operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. From and after the effective date of this act, the citizens and property in Village of Lake Park shall be subject to municipal taxes levied for the year beginning July 1, 1994, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1994. The Village may adopt a budget ordinance for fiscal year 1994-95 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1994-95, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1994. If this act is ratified before July 1, 1994, the Village may adopt a budget ordinance for fiscal year 1993-94 without following the timetable in the Local Government Budget and Fiscal

Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1993-94 fiscal year.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1619

## CHAPTER 621

AN ACT TO COMPLY WITH FEDERAL LAW BY REVISING THE BINGO STAMP METHOD OF ENSURING THAT FOR-HIRE VEHICLES OPERATED IN THIS STATE IN INTERSTATE COMMERCE ARE INSURED AND TO MAKE TECHNICAL CHANGES TO THE MOTOR CARRIER LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-382 reads as rewritten:

"§ 20-382. ~~Interstate carriers.~~ Registration of for-hire interstate motor carriers and verification that their vehicles are insured.

(a) ~~Registration.~~ -- This Article shall apply to persons and vehicles engaged in interstate commerce over the highways of this State, except insofar as the provisions of this Article may be inconsistent with, or shall contravene, the Constitution or laws of the United States, and the Division may, in its discretion, require such carriers to file with it copies of their respective interstate authority or register their exempt operation and registration of their vehicles operated in the State, and to observe such reasonable rules and regulations as the Division may deem advisable in the administration of this Article and for the protection of persons and property upon the highways of the State. A motor carrier may not operate a for-hire motor vehicle in interstate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with the Division by doing one of the following:

a. Filing a copy of the certificate of authority issued to it by the Interstate Commerce Commission allowing it to operate in this State and any amendments to that authority.

b. Certifying to the Division that it carries only items that are not regulated by the Interstate Commerce Commission.

(2) Verified, in accordance with subsection (b) or (c) of this section, that it has insurance for each for-hire motor vehicle it operates.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification for ICC-Regulated Motor Carriers. -- The Division or its authorized representative is authorized to confer with and to hold joint hearings with the authorities of other states or with the Interstate Commerce Commission or its representatives, or any other federal or State agency in connection with any matter arising under this Chapter, or under the Federal Motor Carrier Act, or under any other federal law which may directly or indirectly affect the interests of the people of this State or the policy declared by this Chapter or by the Interstate Commerce Act. A motor



carrier that operates a for-hire motor vehicle in interstate commerce in this State, is regulated by the Interstate Commerce Commission, and designates this State as its registration state must obtain a receipt from the Division verifying that each for-hire motor vehicle the motor carrier operates in any jurisdiction is insured. To obtain a receipt, the motor carrier must apply annually to the Division during the application period and state the number of for-hire motor vehicles the motor carrier intends to operate in each jurisdiction during the next calendar year. The certificate of authority issued to the motor carrier by the Interstate Commerce Commission is proof that the motor carrier has insurance for its for-hire motor vehicles.

The motor carrier must keep a copy of the receipt in each of its for-hire motor vehicles. The motor carrier may transfer the receipt from one for-hire motor vehicle to another as long as the total number of for-hire motor vehicles operated in any jurisdiction and in all jurisdictions does not exceed the number stated on the receipt.

A motor carrier may operate more for-hire motor vehicles in a jurisdiction than stated in its most recent annual application only if the motor carrier files another application with the Division and obtains a receipt stating the increased number. A motor carrier that obtains a receipt for an increased number of for-hire motor vehicles must put a copy of the new receipt in each of its for-hire motor vehicles. The new receipt replaces rather than supplements the previous receipt.

(c) Insurance Verification for Nonregulated Motor Carriers. -- Any person operating a for-hire motor vehicle in interstate commerce over the highways of this State without having properly registered with the Division its respective exempt operation or a copy of its interstate authority and each vehicle operated in this State shall be subject to a penalty of seventy-five dollars (\$75.00), which shall be added to the registration fees provided in G.S. 20-385 and said penalty shall be collected with said registration fee from any carrier operating on the highways of North Carolina without registering his interstate authority by inspectors and officers of the Division in accordance with rules and regulations duly adopted by the Division before said vehicle shall be permitted to operate further upon the highways of North Carolina. A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is exempt from regulation by the Interstate Commerce Commission must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured. To do this, the motor carrier must obtain annually for each for-hire motor vehicle a cab card approved by the Commissioner and a North Carolina identification stamp issued by the Division. To obtain an identification stamp, the motor carrier must apply annually to the Division during the application period for an identification stamp for each for-hire motor vehicle the motor carrier intends to operate in this State during the next 12-month period beginning February 1.

The motor carrier must place the identification stamp on the cab card and keep the cab card in the for-hire motor vehicle for which it was issued. An identification stamp is issued for a specific for-hire motor vehicle and is not transferable from one for-hire motor vehicle to another.



A motor carrier may operate in this State a for-hire motor vehicle for which it did not obtain an identification stamp during the most recent annual application period only if it obtains for that vehicle either a cab card and identification stamp or an emergency permit. A motor carrier may obtain an additional identification stamp after the close of the annual application period by filing an application for it with the Division. An identification stamp issued after the close of the annual application period expires the same date as one issued during the annual application period.

A motor carrier may obtain an emergency permit by filing an application for it with the Division. An emergency permit allows the motor carrier to operate a for-hire motor vehicle in this State without a cab card and identification stamp between the time the motor carrier has applied for an identification stamp and the time the Division issues the identification stamp.

~~(d) No motor carrier, whether operating as a regulated carrier or exempt for hire carrier, shall operate or cause to be operated in interstate commerce in this State any vehicle until he has filed evidence of required insurance with the Division and has been issued an identification stamp for such vehicle, which stamp must be attached to the approved uniform cab card and carried in the vehicle at all times. The identification stamp herein provided for shall be issued on an annual basis as of January 1st each year and shall be valid through February 1st the next succeeding year. When any person is discovered in this State, operating a vehicle in violation of this section, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle until he shall pay to the Division a penalty of seventy-five dollars (\$75.00). No court of the State shall entertain a suit of any kind brought for the purpose of preventing the collection of any penalty imposed in this section. Whenever a person shall have a valid defense to the enforcement of the collection of a penalty assessed or charged against him, such person shall pay such penalty to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles; and if same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the person paying the penalty resides. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of said vehicle without payment of the penalty prescribed herein."~~

Sec. 2. Part 2 of Article 17 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.

(a) Registration. -- A motor carrier may not operate a for-hire motor vehicle in intrastate commerce in this State unless the motor carrier has complied with all of the following requirements:

- (1) Registered its operations with the State by doing one of the following:
  - a. Obtaining a certificate or a permit from the North Carolina Utilities Commission, if the motor carrier hauls regulated items.
  - b. Obtaining a certificate of exemption from the Division, if the motor carrier hauls only items that are not regulated by the North Carolina Utilities Commission.
- (2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates in this State.
- (3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. -- A motor carrier that operates a for-hire vehicle in intrastate commerce in this State must verify to the Division that each for-hire motor vehicle it operates in this State is insured. To do this, the motor carrier must submit an insurance verification form to the Division and must file annually with the Division a list of the for-hire vehicles it operates in this State."

Sec. 3. Part 2 of Article 17 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. -- A motor carrier who does any of the following is subject to a civil penalty of seventy-five dollars (\$75.00):

- (1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.
- (2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.
- (3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. -- When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. -- Upon receiving a request for a hearing, the Commissioner must schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected must be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in

the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. -- A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue."

Sec. 4. G.S. 20-385 reads as rewritten:

"§ 20-385. *Particular fees and charges fixed; payment. Fee schedule.*

(a) Amounts. -- The Divisions shall receive and collect the following fees and charges:

- (1) One dollar (\$1.00) for the registration with the Division of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the North Carolina Utilities Commission, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.
- (2) Twenty-five dollars (\$25.00) for the filing with the Division of the interstate motor carrier operating authority or registration of interstate exempt operation of every motor carrier operating into, from, within, or through North Carolina and filed with the Division under the provisions of G.S. 20-382 and five dollars (\$5.00) for filing all subsequent amendments thereto to maintain said filing in a current status.
- (3) One dollar (\$1.00) for the registration with the Division of each motor vehicle operated into, from, within, or through North Carolina by interstate carriers and registered with the Division under the provisions of G.S. 20-382, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.
- (4) Twenty-five dollars (\$25.00) for each Certificate of Exemption issued by the Division.
- (5) Ten dollars (\$10.00) for each emergency permit issued by the Division in accordance with G.S. 20-382.
- (1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State \$ 1.00
- (2) Application by an intrastate motor carrier for a certificate of exemption 25.00
- (3) Certification by an interstate motor carrier that it is not regulated by the ICC 25.00
- (4) Application by an interstate motor carrier for an emergency permit 10.00.

(b) Reciprocal Agreements. -- The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the Interstate Commerce Commission if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont."

Sec. 5. G.S. 20-376(3), (6), (10), (11), (12), (17), (18), (20), and (22) are repealed.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1644

## CHAPTER 622

### AN ACT TO ALLOW CERTAIN COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARD OF EDUCATION.

*The General Assembly of North Carolina enacts:*

Section 1. Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, and as codified as G.S. 153A-157, reads as rewritten:

"§ 153A-157. *Power to acquire property in certain counties.*

(a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any other lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) This section applies to Ashe, Avery, Bladen, Cabarrus, Carteret, Columbus, Duplin, Franklin, Harnett, Iredell, Johnston, Lee, Pender, Richmond, Rowan, Sampson, and Stanly Counties.

Sec. 1.1. G.S. 153A-157, as amended by Section 1 of this act, is amended by adding a new subsection to read:

"(a1) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

Sec. 2. Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are located.

Sec. 3. Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

Sec. 4. Sections 1.1, 2, and 3 of this act apply only to Ashe, Avery, Harnett and Lee Counties and to local boards of education for school administrative units in or for those counties. Section 3 of this act applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.



**Sec. 5.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1846

## CHAPTER 623

AN ACT TO ALLOW HARNETT AND LEE COUNTIES TO ACQUIRE  
PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, and as codified as G.S. 153A-157, reads as rewritten:

*"§ 153A-157. Power to acquire property in certain counties.*

(a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any other lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) This section applies to Bladen, Cabarrus, Carteret, Columbus, Duplin, Franklin, Harnett, Iredell, Johnston, Lee, Pender, Richmond, Rowan, Sampson, and Stanly Counties."

**Sec. 1.1.** G.S. 153A-157, as amended by Section 1 of this act, is amended by adding a new subsection to read:

"(a1) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

**Sec. 2.** Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are located.

**Sec. 3.** Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

**Sec. 4.** Sections 1.1, 2, and 3 of this act apply only to Harnett and Lee Counties and to local boards of education for school administrative units in or for the counties. Section 3 of this act applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

**Sec. 5.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.



S.B. 87

## CHAPTER 624

AN ACT TO REQUIRE CONSENT OF THE BOARD OF COMMISSIONERS OF LISTED COUNTIES BEFORE LAND MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY AND TO PROVIDE THAT THE PROVISIONS OF G.S. 153A-15 IN ANY COUNTY SUBJECT TO THAT SECTION DO NOT APPLY TO PROPERTY WITHIN THE CITY LIMITS OF THE CITY THAT IS ACQUIRING THE PROPERTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Caldwell, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Davie, Duplin, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Montgomery, New Hanover, Pender, Person, Robeson, Rockingham, Rowan, Sampson, Scotland, Stokes, Swain, Transylvania, Union, Vance, Wake, Warren, and Wilkes counties only. This section does not apply as to any:

(1) Condemnation; or

(2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1632

## CHAPTER 625

AN ACT TO ALLOW THE TOWNS OF KILL DEVIL HILLS, KITTY HAWK, NAGS HEAD, AND SOUTHERN SHORES TO REGULATE CERTAIN ACTIVITIES IN WATERWAYS ADJACENT TO THOSE TOWNS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 160A-176.2 reads as rewritten:

"§ 160A-176.2. *Ordinances effective in Atlantic Ocean.*

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Cape Carteret, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Long Beach, Nags Head, Ocean Isle

Beach, Southern Shores, Sunset Beach, Topsail Beach, Wrightsville Beach, and Yaupon Beach, and the City of Southport only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1887

## CHAPTER 626

AN ACT CHANGING THE DATE ON WHICH MEMBERS OF THE PERQUIMANS COUNTY BOARD OF EDUCATION TAKE OFFICE, AND PROVIDING A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF CRESWELL.

*The General Assembly of North Carolina enacts:*

Section 1. Notwithstanding G.S. 115C-37(d) and Section 3 of Chapter 21 of the 1993 Session Laws, beginning with the 1996 election, newly elected members to the Perquimans County Board of Education shall take office at the first meeting of the Board in July following the election, upon taking the oath of office prescribed in Article VI, Section 7 of the Constitution.

Sec. 2. The Charter of the Town of Creswell, being Chapter 276 of the Private Laws of 1907, is amended by adding a new section to read:

"Sec. 3.1. A Mayor shall be elected in 1995 and quadrennially thereafter for a four-year term."

Sec. 3. This act is effective upon ratification. Section 2 of this act does not affect the current two-year term of office of the Mayor of Creswell.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1950

## CHAPTER 627

AN ACT TO AUTHORIZE THE CITY OF DURHAM, THE COUNTY OF DURHAM, AND THE DURHAM PUBLIC SCHOOLS TO DISPOSE OF PERSONAL PROPERTY.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 160A-266(c), as it applies to the City of Durham under Chapter 413 of the Session Laws of 1973 reads as rewritten:

"(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five hundred dollars (\$500.00)~~ ten thousand dollars (\$10,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five hundred dollars (\$500.00)~~ ten thousand dollars (\$10,000) for any one item or group of items, to set its fair market value, and to convey title to

the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year. The written report shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange since the last such report was submitted. Nothing contained in this Article shall be construed as prohibiting the abandonment, release, or other disposition of wrecked or damaged property in settlement of claims involving damage to such property."

Sec. 2. G.S. 160A-266(c) reads as rewritten:

"(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five hundred dollars (\$500.00)~~ ten thousand dollars (\$10,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five hundred dollars (\$500.00)~~ ten thousand dollars (\$10,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year. The written report shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange since the last such report was submitted."

Sec. 3. (a) Section 1 of this act applies to the City of Durham only. Section 2 of this act applies only to the County of Durham and the Durham County School Administrative Unit.

(b) This act does not supercede any other local act applicable to those units.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

# BOARD OF COMMISSIONERS BEFORE CONDEMNING PROPERTY IN ONSLOW COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Caldwell, Caswell, Cleveland, Columbus, Davidson, Davie, Forsyth, Franklin, Granville, Harnett, Haywood, Henderson, Jackson, Johnston, Lee, Madison, Martin, Montgomery, New Hanover, Onslow, Pender, Person, Rockingham, Rowan, Sampson, Stokes, Swain, Transylvania, Union, Vance, Warren, and Wilkes counties only."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1592

## CHAPTER 629

# AN ACT TO CLARIFY THE DUTY OF THE CITY ATTORNEY OF THE CITY OF NEW BERN WHEN AN INSURANCE CARRIER CAN PROVIDE DEFENSE TO THE CITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 31 of Chapter 1281 of the Session Laws of 1957, being the Charter of the City of New Bern, reads as rewritten:

"Sec. 31. *City Attorney.* The city attorney shall be an attorney at law who shall have practiced in the State of North Carolina for at least two years. He shall be the chief legal adviser of and attorney for the city and all departments and officers thereof in matters relating to their official powers and duties. It shall be his duty, either personally or by such assistants as he may designate, to perform all services incident to the department of law; to attend all meetings of the board of aldermen, unless excused by the mayor; to give advice in writing, when so requested, to the board of aldermen or city manager; to prosecute or defend, as the case may be, all suits or cases to which the city may be a ~~part;~~ party, except litigation in which the city is a defendant, has adequate liability insurance, and is defended by counsel employed by the insurance carrier, which said decision shall be made by the board of aldermen in its sole discretion; to prepare all contracts, bonds and other instruments in writing in which the city is concerned, and to endorse on each his approval of the form and correctness thereof; and to perform such other duties of a legal nature as the board of aldermen may require. In addition to the duties imposed upon the city attorney by this Charter or required of him by ordinance or resolution of the board of aldermen, he shall perform any duties imposed upon the chief legal officers of municipalities by law."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1742

## CHAPTER 630

## AN ACT TO INCREASE THE SIZE OF THE CIVIL SERVICE BOARD FOR THE CITY OF NEW BERN, AND TO PROVIDE FOR STAGGERED TERMS ON THAT BOARD.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 42 of Chapter 1281 of the Session Laws of 1957, Chapter 934 of the Session Laws of 1959, Chapter 1111 of the Session Laws of 1961, Chapter 693 of the Session Laws of 1965, Chapter 324 of the Session Laws of 1969, Chapter 785 of the Session Laws of 1971, and Section 4 of Chapter 1168 of the Session Laws of 1981 reads as rewritten:

"Sec. 42. Civil Service for Police. (a) There shall be created a Civil Service Board for the City of New Bern, to consist of ~~three~~ five members who shall be representative citizens of the City of New Bern, to be appointed by the board of aldermen to serve for a period of two years, except that one of the three members first appointed shall be appointed to serve for a period of one year who shall be replaced at the end of such term by a member who shall serve a term as above set ~~forth~~, forth, and except that the initial term of the two members added to expand the Board from three members to five members shall be for one year. The Board of Aldermen may provide that the initial terms of the two additional members may extend beyond the initial one year to expire on the same month and date as the terms of the three other members.

No member of the Civil Service Board may serve on the board of aldermen or on the police force while a member of the Civil Service Board, and no member of said board shall serve more than one consecutive term. In case of a vacancy on the Civil Service Board, the board of aldermen shall fill such vacancy for the unexpired term of said member. A majority of said board shall constitute a quorum.

The members of said Civil Service Board shall take an oath to faithfully perform their duties. The members of said board shall be subject to removal from office by a two-thirds vote of the board of aldermen, with or without cause.

(b) Said board, with the advice and counsel of the Chief of Police, shall establish and fix requirements for applicants for position in the police department and all persons who make application shall be subjected to an examination by said board which shall be competitive and free to all persons possessing the rights of suffrage and meeting the requirements of said board, subject to reasonable limitations as to residence, age, health, and moral character, and said examinations shall be practical in their nature and shall be limited to those matters which will fairly test the relative ability of the persons examined to discharge the duties and responsibilities of the positions which they are seeking, and shall include tests of physical qualifications, and health, but no applicant shall be examined concerning his political or religious opinions or affiliations.

(c) The Civil Service Board shall advertise for applicants for positions in the police department in a newspaper of general circulation in the City of



New Bern. Said advertisement shall state the basic requirements and a closing date for receiving applications. Notice of time and place of every examination shall be given to each qualified applicant by the board at least five days prior to such examination.

(d) Said board shall prepare and keep a register of persons passing said examinations, graded according to their respective showings upon said examinations. Any applicant passing said examinations shall be eligible to be appointed a member of the police department. The Board of Aldermen shall, from time to time, select new appointees to the police department from such register, taking into consideration the grade which an applicant has made upon such examination, his physical condition, moral character and standing in the community. Such examination shall be held for applicants as often as said board shall determine to be necessary, but no less frequently than once every two (2) years, and the names of applicants appearing on the register of persons passing the examination shall constitute the register from which applicants for membership in the police department shall be selected, until the next examination shall be given. From the date of his selection by the Board of Aldermen, each new appointee to the police department shall serve in a probationary status for a period of twelve (12) months, during which said period the officer may be dismissed by the Chief of Police, with or without cause. The officer so dismissed shall have no opportunity for a hearing before the Civil Service Board, or otherwise, on the subject of his dismissal.

(e) No member of the police department coming under the jurisdiction of the Civil Service Board shall take any part in any election or political function other than that of exercising his right to vote, and any such member of the police department convicted of violating this provision by the Civil Service Board shall be dismissed from service of said department by the Civil Service Board.

(f) No member of the police department of the City of New Bern shall be dismissed, removed, or discharged except for cause upon written complaint and until after he has been given an opportunity to be heard by the Civil Service Board in his own defense. In the event such member is convicted of violating the rules and regulations of the police department, said board may dismiss or discharge him from service, or may fine him or suspend him without pay for a period not to exceed ninety days. Upon the filing of a written complaint with the Civil Service Board by the chief of police, requesting that a member of the police department be discharged, the chief of police shall suspend such member from duty pending an investigation and hearing of the charges by the board. The hearing by the board shall be conducted as soon as is reasonably possible, and in no event longer than thirty days after the written complaint shall have been filed with the clerk of said board, unless the suspended member of the police department shall, in writing, file with said clerk a request for delay beyond said period of time. In the conduct of said investigation each member of said board shall have the power to secure by subpoena both the attendance and testimony of witnesses and the production of any documents or papers of any kind relevant to such investigation. The Civil Service Board may make such rules and regulations from time to time with respect to the manner in which

the hearing shall be conducted as shall be desired by said board. The decision of the Civil Service Board shall be final. Notwithstanding any other provision herein set forth, the chief of police may suspend any member of the police department for violation of any of the rules and regulations of the police department for a period of time not to exceed three days at any one time, said suspension to be without pay. Such suspension by the chief of police shall not be subject to review by the Civil Service Board. Provided, however, that in the event the officer is subjected to another suspension within ninety days, said officer shall have the right to appeal such additional suspension to the Civil Service Board.

(g) Promotions and demotions of members of the police department shall be within the discretion of the Chief of Police.

The Chief of Police may suspend any member of the police department for violation of the rules and regulations of the police department for a period of time not to exceed 30 days at any one time, said suspension to be without pay. Such suspension by the Chief of Police shall not be subject to review by the Civil Service Board; provided, however, that in the event the officer is subjected to another suspension within ninety (90) days, said officer shall have the right to appeal such additional suspension to the Civil Service Board, and any hearing conducted by the Civil Service Board pursuant to such appeal shall be covered by the rules herein below set forth.

In the event the Chief of Police shall determine that a member of the police department should be discharged or subjected to disciplinary action not within the power of the Chief of Police under the above provisions of this section, the Chief shall reduce his charges against the said member of the police department to writing, including his recommendation relative to discharge, fine, or suspension without pay, and shall file a copy of the same with the clerk to the Civil Service Board and deliver a copy to the said member of the police department personally or by certified mail, return receipt requested. Upon delivery of said written charges and recommendations to the member of the police department, if the Chief's recommendation is that the member be discharged or be suspended, the Chief of Police shall suspend such member from duty forthwith. If the charged officer shall not file a request for hearing by the Civil Service Board with the clerk to said Board within five days after the delivery of the charges and recommendations to him, the recommendation of the Chief shall thereupon become effective. In the event said charged officer requests a hearing within said specified period of time, then and in that event, the hearing by the Board shall be conducted as soon as is reasonably possible, and in no event later than 30 days after the written charges have been filed with the clerk to said board, unless the suspended member of the police department shall, in writing, file with said clerk a request for delay beyond said period of time, stating the reason therefor. In the event of such request, the Board shall grant a reasonable postponement if, in its opinion, it is merited by the request, keeping in mind the welfare of the individual and the police department.

If a charged member of the police department, who has requested such hearing, shall withdraw his request, the recommendation of the Chief shall

become effective immediately, and no hearing shall be conducted by the Civil Service Board.

(h) Each member of said Board shall have the power to secure by subpoena both the attendance and testimony of witnesses and the production of any documents or papers of any kind relative to such investigation, at such hearing. Such subpoenas may be directed to any law enforcement officer within the State of North Carolina for service.

The Civil Service Board may make such rules and regulations, from time to time, with respect to the manner in which the hearing shall be conducted as shall be desired by the Board. Such hearings may be open or closed to spectators. Witnesses who are to appear before the Board may be sequestered. Testimony offered before the Board shall be recorded by mechanical process or by court reporter. The ordinary rules of evidences shall not apply, but the hearing shall be conducted with decorum. The decision of the Civil Service Board shall be final.

(i) In the event the charged police officer is found guilty of violating the rules and regulations of the police department, the Civil Service Board may discharge him, fine him, or suspend him without pay for a period not to exceed 90 days. In addition, the Civil Service Board may attach such conditions to his reinstatement to duty as it deems advisable.

(j) In the event a member of the police department shall be appointed by the Board of Aldermen as Chief of Police and shall, prior to his retirement, lose his position as said Chief of Police by removal, failure of reappointment, or resignation, he may, at his option, then reassume his position as a member of the police department of the City of New Bern, and in such capacity shall perform such duties as may be assigned him by his successor in office. During a period of six months following his resumption of duties as a member of the police department rather than as Chief of Police, he shall receive as compensation a salary not less than that of the pay grade in which he was serving at the time of his appointment as Chief, together with such increases in pay as have been given in the intervening period to that pay grade; provided, however, said individual shall be subject to disciplinary action as herein provided, as are other members of the police department.

(k) The board shall make an annual report of its actions for the preceding year and said annual report shall be kept in the files of said board and copy delivered to the board of aldermen.

The city manager or his designee shall act as secretary to the Civil Service Board and shall keep the minutes of its meetings and shall be custodian of all papers and records pertaining to the business of said board and shall keep a record of all examinations held and shall perform such other duties as the board may require.

(l) The members of said Civil Service Board shall serve without compensation.

(m) The provisions of this Civil Service Section shall not apply to the chief of police."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1882

## CHAPTER 631

## AN ACT TO ALLOW THE TOWN OF WHITE LAKE TO OPERATE A CONTRACT POST OFFICE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 16 of the 1991 Session Laws, as amended by Chapter 350 of the 1991 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the ~~Town of Stallings~~ Towns of Stallings and White Lake and the Village of Bald Head Island only."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1959

## CHAPTER 632

## AN ACT TO PROHIBIT HUNTING WITH FIREARMS FROM PUBLIC ROADS IN CABARRUS AND PASQUOTANK COUNTIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** It is unlawful to hunt, take, or kill with the use of firearms, or to attempt to hunt, take, or kill with the use of firearms, any bird or game animal, or to discharge a firearm from, on, or across the right-of-way of any numbered highway maintained by the State of North Carolina.

**Sec. 2.** It is unlawful to hunt, take, or kill any bird or game animal from or on the right-of-way of any public road or highway, or to discharge a firearm from or on the right-of-way of a public road or highway, without first securing the written permission of the owner or lessee of the land which abuts the public road or highway. If written permission is secured in compliance with this section, any vehicle which is being used to hunt or to discharge a weapon must be completely off the traveled surface of a paved road or highway. It is unlawful under any circumstances to hunt, take, or kill a bird or game animal or to discharge a firearm from, on, or across the traveled surface of a public road or highway.

**Sec. 3.** It is unlawful for any person to have in his possession a loaded shotgun or centerfire rifle while on the right-of-way of any public road or highway while outside the confines of the passenger area of a vehicle without the written permission of the owner or lessee of the land which abuts the public road or highway. It is unlawful for any person to have in his possession a loaded shotgun or centerfire rifle while on the traveled surface of any public road or highway when outside the confines of the passenger area of a vehicle.

**Sec. 4.** Violation of this act is a Class 3 misdemeanor.

**Sec. 5.** This act is enforceable by officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

**Sec. 6.** Section 1 of this act applies only to Cabarrus County. Sections 2 and 3 of this act apply only to Pasquotank County.

**Sec. 7.** This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1991

### CHAPTER 633

AN ACT TO AMEND THE NORTH WILKESBORO FIREMEN'S SUPPLEMENTARY FUND TO INCLUDE CERTAIN RETIRED FIRE DEPARTMENT EMPLOYEES AND VOLUNTEER FIREMEN PREVIOUSLY EXCLUDED.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 5.2(c) of Article V of the Charter of the Town of North Wilkesboro, as rewritten by Section 1 of Chapter 263 of the 1977 Session Laws, is rewritten to read:

"Sec. 5.2(c). Any person who is a member of the town fire department, either as a paid employee or as a volunteer, or any person who becomes a member, is eligible for benefits from the Supplementary Pension Fund. This subsection does not modify or alter in any way the Worker's Compensation Laws of the State of North Carolina."

**Sec. 2.** None of the provisions of this act create a liability for the North Wilkesboro Firemen's Supplementary Fund or for the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

**Sec. 3.** This act is effective upon ratification and applies to determinations of eligibility made on or after this date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1994

### CHAPTER 634

AN ACT TO AMEND CHAPTER 1073 OF THE 1959 SESSION LAWS TO PROVIDE THAT THE SHERIFF ISSUE WEAPON PERMITS IN POLK, MADISON, AND YANCEY COUNTIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 1073 of the 1959 Session Laws, as further amended, is amended in Section 4 by deleting the terms "Polk", "Madison", and "Yancey".

**Sec. 2.** Article 52A of Chapter 14 of the General Statutes shall apply to Polk, Madison, and Yancey Counties.

**Sec. 3.** This act is effective upon ratification and applies to applications for permits filed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.



H.B. 2006

## CHAPTER 635

## AN ACT TO ALLOW THE TRAPPING AND KILLING OF RED WOLVES BY OWNERS OF PRIVATE LAND.

Whereas, red wolves have been introduced by the U.S.

Fish and Wildlife Service on federal property in Dare County; and

Whereas, red wolves have spread from Dare County to Hyde County, where they pose a danger to livestock, wildlife, and residents who have not given permission for a wolf population to be established on their property; and

Whereas, efforts by the U.S. Fish and Wildlife Service to trap and remove wolves have not been successful in removing wolves for a significant period of time; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** It is lawful for a private landowner or the landowner's agent at any time to trap and kill red wolves that are on the landowner's property, and that the property owner reasonably believes may be a threat to the person's own life or the lives of others, or to the life of livestock on the property provided that the landowner has previously requested the U.S. Fish and Wildlife Service to remove the red wolves from the landowner's property and that the landowner shall report the killing of a wolf to the U.S. Fish and Wildlife Service within 48 hours.

**Sec. 2.** This act applies only to Hyde and Washington Counties.

**Sec. 3.** This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2008

## CHAPTER 636

## AN ACT TO INCREASE THE BENEFITS OF THE HENDERSON FIREMEN'S SUPPLEMENTAL RETIREMENT SYSTEM.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 4 of Chapter 810 of the 1959 Session Laws, as amended by Chapter 374 of the 1969 Session Laws, Chapter 133 of the 1977 Session Laws, Chapter 111 of the 1981 Session Laws, Chapter 173 of the 1987 Session Laws, and Chapter 897 of the 1991 Session Laws, is further amended by deleting the sentence beginning with "All amounts received for the Fund, except eighty percent (80%) of the interest and funds received from other sources..." and ending with "...may be invested as provided in this act.", and by substituting the following:

"All funds received by the Fund (including interest received) from other sources during each fiscal year and funds from prior years may be used for payments of supplemental benefits to retired members of the Henderson City Fire Department as authorized by the Trustees and as set forth under this

statute, provided, however, that a minimum of two hundred fifty thousand dollars (\$250,000) of investments shall be continuously maintained by the Fund. All Fund balances in excess of this amount may be used for benefit payments and other authorized expenses. Any Fund balances, which are not paid out, may be invested as provided in this act."

Sec. 2. Subsection (k) of Section 2 of Chapter 810 of the 1959 Session Laws, as amended by Chapter 374 of the 1969 Session Laws, Chapter 133 of the 1977 Session Laws, Chapter 111 of the 1981 Session Laws, and Chapter 897 of the 1991 Session Laws, is rewritten to read:

"(k) Officers. The Chairman, Vice Chairman, Secretary and Treasurer of the Henderson Firemen's Supplemental Retirement System shall be elected by the Board of Trustees at the first organizational meeting and thereafter at the first quarterly meeting in each year, to serve for the ensuing year and until their respective successors be elected and qualify; provided, however, the office of Secretary and Treasurer may be combined and held by the same person. The Treasurer shall be custodian of the Fund and shall sign all checks and he shall be required to give a bond with an indemnity company authorized to do business in the State of North Carolina as surety in a sum of one hundred thousand dollars (\$100,000). The condition of the bond shall be that the Treasurer shall faithfully receive, keep, disburse, and account for all funds and properties coming into his hands as Treasurer and the premiums on the bond shall be paid out of the Fund."

Sec. 3. Nothing in this act creates a liability for the Henderson Firemen's Supplemental Retirement System unless there are sufficient current assets available in the System to pay fully for the liability.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2024

## CHAPTER 637

### AN ACT TO ALLOW THE CITY OF WASHINGTON TO DECLARE ITS NO-WAKE LAW INAPPLICABLE DURING CERTAIN SPECIAL EVENTS.

*The General Assembly of North Carolina enacts:*

Section 1. Chapter 434 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 3.1. Section 2 of this act does not apply during special events as designated by ordinance adopted by the City Council of the City of Washington or order issued by the City Manager of the City of Washington. Any ordinance or order issued pursuant to this section shall designate the duration of the exemption and the territorial area to which the exemption applies. Any order issued by the City Manager pursuant to this section shall be recorded in the ordinance book of the City of Washington."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2029

## CHAPTER 638

## AN ACT RELATING TO THE REGULATION OF SUBDIVISIONS IN ROBESON COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 1 of Chapter 535 of the 1987 Session Laws, as amended by Chapter 131 of the 1993 Session Laws, reads as rewritten:

"Section 1. For purposes of Part 2 of Article 18 of Chapter 153A of the General Statutes, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions, for the purpose, whether immediate or future of sale or building development and shall include all divisions of land involving the dedication of a new street or a change in existing street; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by Part 2, Article 18 of Chapter 153A of the General Statutes: Statutes; provided that the grantor of any land who by deed subdivides the land other than by recorded subdivision plat shall include in the deed a statement as to why the subdivision is exempt from these regulations by reference to one or more of the following sections:

- (1) The combination or recombination of portions of previously recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ~~regulations;~~ regulations and the combination or recombination does not change or alter the location of a public or private road as shown on a plat previously recorded in the Robeson County Register of Deeds;
- (2) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (3) The conveyance of a lot or tract to a grantee who would have been an heir of the grantor if the grantor had died intestate immediately prior to the conveyance, provided that grantor has not previously conveyed a lot or tract of land to the grantee from the same tract or parcel of land, unless the conveyance results in a combination or a recombination as provided for above in number one;
- (4) The conveyance of a lot or tract for the purpose of dividing lands among the tenants in common, all of whom inherited by intestacy or by will, the land from a common ancestor;
- (5) The division of land into parcels of ~~five~~ two and one-half acres or more where the grantor records a road right-of-way agreement prior to or simultaneously with the recording of the deed, which said agreement provides for access to the parcel by a right-of-way of at least 45 feet in width and contains an agreement for construction and maintenance of the road;
- (5a) ~~The division of land into parcels of two and one-half acres or more for the purpose of conveying land to a grantee or grantees within any degree of lineal kinship to the grantor or within three degrees of collateral kinship to the grantor where the grantor~~

~~records a road right-of-way agreement prior to or simultaneously with the recording of the deed, which said deed agreement provides for access to the parcel by a right-of-way of at least 45 feet in width and contains an agreement for construction and maintenance of the road.~~

- (6) The division of land pursuant to an Order of the General Court of Justice;
- (7) The division of land for cemetery lots or burial plots;
- (8) The conveyance of a tract or parcel of land of at least 20,000 square feet exclusive of State right-of-way for a road with at least 100 feet frontage upon a State-maintained road; as well as a driveway permit previously issued by the Department of Transportation along the 100 foot frontage and a means of sewage disposal by a previously issued permit from the Division of Environmental Management or the Robeson County Health Department; and
- (9) The conveyance of a tract or parcel of land when compliance with Subdivision Ordinance would cause a serious financial hardship on grantor in accordance with standards and procedures to be set out in Subdivision Ordinance proposed to be adopted pursuant to Part 2 of Article 18 of Chapter 153A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2038

## CHAPTER 639

### AN ACT TO AUTHORIZE THE BURLINGTON CITY SCHOOL UNIT TO DISPOSE OF CERTAIN PROPERTY AT PRIVATE SALE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Notwithstanding G.S. 115C-518(a) or Article 12 of Chapter 160A of the General Statutes, the Burlington City Board of Education may convey at private negotiation and sale, with exchange for other property or monetary consideration, or both, any or all of its right, title, and interest to the following described real property or any part thereof:

A certain tract or parcel of land in the City of Burlington, Burlington Township, Alamance County, North Carolina, adjoining Sherwood Court and others and more particularly described as follows:

BEGINNING at an iron stake in the eastern margin of Sherwood Court, being the northwestern corner of Lot No. 1, Section 1, of the Bessie W. Hornaday property as shown in Plat Book 11, at page 37, Alamance County Registry; thence in a northerly direction along a curve to the right, chord of which is N. 5° 44' 55" E. 20.14 ft., with an arc distance of 21.46 ft., to an iron stake in the eastern margin of Sherwood Court; thence with the eastern margin of Sherwood Court in a northerly direction along a curve to the left, radius of which curve is 60 ft., and chord of which is N. 2° 22' 26" W. 82.23 ft., to an iron stake in the eastern margin of Sherwood Court,

corner with the property of the Burlington City Board of Education (Hillcrest Elementary School); thence with the Burlington City Board of Education, N. 68° 20' E. 94.21 ft. to an iron stake in the line of the property of Brookwood Baptist Church, corner with the Burlington City Board of Education; thence with Brookwood Baptist Church, S. 35° 30' 4" E. 62 ft. to an iron stake, being a corner with Brookwood Baptist Church and Lot No. 2, Section 1, of the Bessie W. Hornaday property as shown in Book 11, at page 37, Alamance County Registry; thence successively with Lots 2 and 1 of said subdivision S. 54° 41' 50" W. 149.7 ft. to the BEGINNING, and containing 8100 sq. ft. This description was obtained from a survey of Alley, Williams, Carmen & King, Inc. dated February 17, 1994.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2065

## CHAPTER 640

### AN ACT TO AMEND THE CHARLOTTE FIREFIGHTERS' RETIREMENT SYSTEM ACT.

*The General Assembly of North Carolina enacts:*

Section 1. Section 2 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws, Chapter 1033 of the 1987 Session Laws, and Chapter 248 of the 1989 Session Laws, is amended by adding a new subdivision to read:

"(9a) 'Death Benefit Recipient' means any person who is in receipt of benefits payable as specified in Section 21."

Sec. 2. Section 4 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws, reads as rewritten:

"Sec. 4. Periods of ~~Workers~~ Workers' Compensation & Accident and Sickness Sickness, Family Medical Leave Act, and Long-Term Disability Benefits. Membership Service Credit shall be credited to a Member for any periods of workers' ~~compensation and/or compensation~~, accident and ~~sickness~~ sickness, Family Medical Leave Act, or long-term disability benefits for which said Member contributes to the Charlotte Firefighters' Retirement System an amount equal to the Compensation the Member would have earned multiplied by the sum of the then current social security contribution rate and five percent (5%). Such contributions must be made within a 12 calendar month period from and after the date the Member returns to employment with the Charlotte Fire Department and prior to the Member's termination of membership or retirement."

Sec. 3. Chapter 926 of the 1947 Session Laws is amended by adding a new section to read:

"Sec. 13.1. Direct Rollover of Eligible Rollover Distributions. (a) This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to



have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions.

- (1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (2) Eligible retirement plan. An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) Direct rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee."

Sec. 4. Section 19 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws, Chapter 1033 of the 1987 Session Laws, Chapter 248 of the 1989 Session Laws, and Chapter 830 of the 1991 Session Laws, reads as rewritten:

"Sec. 19. *Disability Retirement in the Line of Duty.* (a) An 'Application for Disability Retirement in the Line of Duty' shall be filed by the Member or his department head with the Administrator, provided that the Member has applied for and been granted workers' compensation benefits on account of this disability.

(b) An 'Application for Disability Retirement in the Line of Duty' shall be administered pursuant to rules and regulations adopted by the Board of Trustees from time to time and approved by the City of Charlotte and administered in a uniform and nondiscriminatory manner.

(c) Effective July 1, 1986, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to seventy-two

percent (72%) of his Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Effective July 1, 1987, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to the greater of seventy-two percent (72%) or two and four-tenths percent (2.4%) multiplied by his Membership Service, of his Final Average Salary, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Effective July 1, 1988, prior to his retirement pursuant to the provisions of this Section, but not thereafter, a Member may elect to receive an Actuarial Equivalent, computed as of the effective date of his retirement, of his monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the provisions of the Option 5, Fifty Percent (50%) Joint and Survivor Benefit, as set forth in subsection (g) of Section 17. The Actuarial Equivalent for all Members retiring pursuant to this Section shall be computed in accordance with the Unisex Mortality Table for 1984 set forward one year in age, with interest at six percent (6%). Benefits payable under this Section shall be effective on the date of approval by the Board of Trustees or upon exhaustion of workers' compensation benefits, whichever is later. Also, disability retirement benefits payable under this Section may be adjusted by the disability retirement regulations adopted pursuant to the requirements contained in subsection (b) of this Section. A Retiree receiving disability retirement benefits shall revert to a service retirement as specified in Section 15 and shall receive the greater of such disability retirement benefits or his Accrued Benefit as determined as of the last date of active employment with the Charlotte Fire Department at such time as the Retiree's attained age and Membership Service Credit meet the requirements for a service retirement."

Sec. 5. Section 20 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws, Chapter 1033 of the 1987 Session Laws, Chapter 248 of the 1989 Session Laws, and Chapter 830 of the 1991 Session Laws, reads as rewritten:

"Sec. 20. *Disability Retirement not in the Line of Duty.* (a) An 'Application for Disability Retirement not in the Line of Duty' shall be filed by a Member or his department head with the Administrator, provided that the Member has 10 or more years of Membership Service Credit and has applied for and been granted accident and sickness benefits on account of the disability.

(b) An 'Application for Disability Retirement not in the Line of Duty' shall be administered pursuant to rules and regulations adopted by the Board of Trustees from time to time and approved by the City of Charlotte and administered in a uniform and nondiscriminatory manner.

(c) Effective July 1, 1986, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to thirty-six percent (36%) of his Final Average Salary, plus one and eight-tenths percent (1.8%) of his Final Average Salary multiplied by the Membership Service Credit in excess of 10 years, not to exceed one hundred percent (100%) of his Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Effective July 1, 1988, prior to his retirement pursuant to the provisions of this section, but not thereafter, a Member may elect to receive

an Actuarial Equivalent, computed as of the effective date of his retirement, of his monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the provisions of the Option 5, Fifty Percent (50%) Joint and Survivor Benefit, as set forth in subsection (g) of Section 17. The Actuarial Equivalent for all Members retiring pursuant to this section shall be computed in accordance with the Unisex Mortality Table for 1984 set forward one year in age, with interest at six percent (6%). Benefits payable under this section shall be effective on the date of approval by the Board of Trustees. Also, disability retirement benefits payable under this Section may be adjusted by the disability retirement regulations adopted pursuant to the requirements contained in subsection (b) of this Section. A Retiree receiving disability retirement benefits shall revert to a service retirement as specified in Section 15 and shall receive the greater of such disability retirement benefits or his Accrued Benefit as determined as of the last date of active employment with the Charlotte Fire Department at such time as the retiree's attained age and Membership Service Credit meet the requirements for a service retirement."

Sec. 6. Section 23 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws and Chapter 248 of the 1989 Session Laws, reads as rewritten:

"Sec. 23. *Post-Retirement Adjustments.* (a) The retirement benefits payable to a Retiree pursuant to the provisions of this act may be adjusted at the discretion of the Board of Trustees based upon the prevailing economic and funding conditions. Such adjustment shall not be paid until such adjustment is ratified by the City of Charlotte.

(b) Effective July 1, 1989, the Board of Trustees shall make an annual bonus payment in the month of January following an annual actuarial valuation when the actuary determines that the actual payroll contributions exceed the required contributions adjusted for any actuarial gains and losses that may have occurred during the preceding year. The lesser of fifty percent (50%) of the excess amount determined by the actuary or the aggregate monthly benefit of the Retirees eligible for the bonus shall be distributed. A Retiree who has been retired for at least one year as of December 31, preceding distribution of the bonus, shall receive a bonus that is determined by the Administrator as proportional of the Retiree's monthly benefit to the aggregate monthly benefits of all Retirees eligible for the bonus.

(c) Effective July 1, 1994, the provisions of this Section shall apply to surviving beneficiaries and death benefit recipients receiving benefits from the Charlotte Firefighters' Retirement System."

Sec. 7. Section 25 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws, reads as rewritten:

"Sec. 25. *City of Charlotte Contributions.* (a) The City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System an amount equal to the Member's Compensation multiplied by the sum of the then current social security contribution rate and five percent (5%), for each and every payroll of such Member.

(b) Should any Member of this Retirement System enter the Armed Forces of the United States of America, the City of Charlotte shall contribute

to the Charlotte Firefighters' Retirement System for each and every payroll an amount equal to the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to subsection (a) of this section for a period not to exceed the lesser of the Member's actual period of active military duty or five years.

(c) Should any Member of the Retirement System enter the Armed Forces of the United States of America, upon approval by the City Council, the City of Charlotte by and on behalf of such Member may contribute an amount equal to, but not to exceed, the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to Section 24 of this act. Any contributions by and on behalf of such Member shall inure to the benefit of such Member as though made by such Member under the provisions of this act unless otherwise specified in this act.

(cl) Should any Member of the Retirement System contribute an amount pursuant to Section 4 for the purpose of receiving Membership Service Credit for any period of Family Medical Leave Act benefits, the City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System an amount equal to the Compensation that Member would have earned multiplied by the then current social security contribution rate and five percent (5%).

(d) In addition thereto, the City Council may, within its discretion and upon the recommendation of the Board of Trustees, appropriate funds necessary to provide a cost of living increase to the Retirees of the System."

**Sec. 8.** Section 29 of Chapter 926 of the 1947 Session Laws, as rewritten by Chapter 506 of the 1987 Session Laws and Chapter 248 of the 1989 Session Laws, and Chapter 830 of the 1991 Session Laws, reads as rewritten:

"**Sec. 29. Board of Trustees.** (a) The Board of Trustees shall consist of 11 Trustees, as follows: (i) City Manager, or some other City department head or employee as duly designated by the City Manager; (ii) City Finance Director, or a deputy finance director as duly designated by the City Finance Director; (iii) City Treasurer; (iv) a Chairman of the Board and three Trustees to represent the public and who are residents of Mecklenburg County and who are appointed by the Resident Judge of the Superior Court of Mecklenburg County and who shall hold office for a period of three years or until their successor shall have been appointed and been qualified; (v) three Members of the Retirement System to be elected by a Majority Vote of the Members of the Retirement System for a term of three years, pursuant to the Charlotte Firefighters' Retirement System Election Regulation; and (vi) one Retiree of the Retirement System to be elected by a vote of the Retirees of the Retirement System for a term of three years, pursuant to the Charlotte Firefighters' Retirement System Election Regulation. The terms of office for elected Trustees and, effective July 1, 1989, for appointed Trustees, shall be graduated so that only one Trustee's term shall expire each year. Any Member shall be eligible to succeed himself as a Trustee.



(b) Conflict of Interest. No trustee, chairman, or other officer or employee of the Charlotte Firefighters' Retirement System shall directly or indirectly become an independent contractor for work done by, or on behalf of, the System, or become directly or indirectly financially interested in, or receive profits from any purchase, contract, or association by or with the System."

Sec. 9. This act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1331

## CHAPTER 641

### AN ACT TO INCORPORATE THE VILLAGE OF MARVIN IN UNION COUNTY.

*The General Assembly of North Carolina enacts:*

Section 1. A charter for the Village of Marvin is enacted to read:

#### "CHARTER OF VILLAGE OF MARVIN.

##### "CHAPTER I.

#### "INCORPORATION AND CORPORATE POWERS.

"Section 1-1. *Incorporation and Corporate Powers.* The inhabitants of the Village of Marvin, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Village of Marvin.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

##### "CHAPTER II.

#### "CORPORATE BOUNDARIES.

"Sec. 2-1. *Village Boundaries.* Until modified in accordance with the law, the boundaries of the Village of Marvin are as follows:

BEGINNING at a point in the centerline of Stacy Howie Road (SR 1311), said point being on the North Carolina-South Carolina State line, and being the southwest corner of the Billy and Martha D. Howard property described in Deed Book 265 at page 708 of the Union County Registry, and running thence with the centerline of Stacy Howie Road (SR 1311) in a northeasterly direction to the intersection of the centerline of Stacy Howie Road (SR 1311) with the centerline of the Waxhaw-Marvin Road (SR 1307); thence with the centerline of the Waxhaw-Marvin Road in a northerly direction to the intersection of the centerline of the Waxhaw-Marvin Road (SR 1307) with the centerline of New Town Road (SR 1315); thence with the centerline of New Town Road (SR 1315) in an easterly direction to the intersection of the centerline of the New Town Road with the Marvin-Weddington Road (SR 1316); thence with the centerline of the Marvin-Weddington Road in a northeasterly direction to the southeast corner of the property of Allen D. Carter and wife Shirley Y. Carter described in Deed Book 216 at page 624 of the Union County Registry; thence with the line of said Carter property North 34 degrees 23 minutes West 330 feet to a corner of the property of Sam W. Craver, Jr. and wife Sarah R. Craver described in Deed Book 337 at page 769 of the Union County Registry, said line



passing an iron pin at 30 feet; thence with the line of said Craver property North 34 degrees 23 minutes West 703 feet to the corner of the Craver property described in Deed Book 337 at page 771 of the Union County Registry; thence with the line of said Craver property North 34 degrees 23 minutes West 1536.7 feet to a corner of the Lucky Realty property described in Deed Book 400 at page 281 of the Union County Registry; thence with the line of the Lucky Realty property North 17 degrees 02 minutes 50 seconds West 1,178.53 feet to a corner of the Reunion Land Company property described in Deed Book 394 at page 461 of the Union County Registry; thence with 3 lines of the Reunion Land Company property as follows: (1) North 15 degrees West 1123 feet; (2) South 46 degrees 30 minutes West 858 feet; (3) North 31 degrees 45 minutes West 1192 feet to the centerline of Six Mile Creek; thence in a southwesterly direction with the centerline of Six Mile Creek to the point where the centerline of Six Mile Creek intersects with the North Carolina-South Carolina State line; thence in a southerly direction with the North Carolina-South Carolina State line to the point and place of BEGINNING.

### "CHAPTER III.

#### "GOVERNING BODY.

"Sec. 3-1. *Structure of Governing Body; Number of Members.* The governing body of Village of Marvin is the Village Council, which has four members and the Mayor.

"Sec. 3-2. *Temporary Officers.* Until the initial election in 1995 provided for by Section 4-1 of this Charter, Don Kerr is hereby appointed Mayor, and Joe Ardrey, Jane Schmitt, Cathy Spain, and Gordon Suhre are hereby appointed members of the Village Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3-3. *Manner of Electing Village Council; Term of Office.* The qualified voters of the entire Village shall elect the members of the Village Council. Except as provided by this section, members are elected to a four-year term of office. In 1995, the two candidates receiving the highest numbers of votes are elected to four-year terms, and the two candidates receiving the next highest number of votes are elected to two-year terms. In 1997 and each two years thereafter, two members are elected for four-year terms.

"Sec. 3-4. *Manner of Electing Mayor; Term of Office.* The qualified voters of the entire Village shall elect the Mayor. The Mayor shall be elected in 1995 and each two years thereafter for a two-year term.

### "CHAPTER IV.

#### "ELECTIONS.

"Sec. 4-1. *Conduct of Village Elections.* Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

### "CHAPTER V.

#### "ADMINISTRATION.

"Sec. 5-1. *Village to Operate Under Mayor-Council Plan.* The Village of Marvin operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

**Sec. 2.** From and after the effective date of this act, the citizens and property in Village of Marvin shall be subject to municipal taxes levied for the year beginning July 1, 1994, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1994. The Village may adopt a budget ordinance for fiscal year 1994-95 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1994-95, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1994. If this act is ratified before July 1, 1994, the Village may adopt a budget ordinance for fiscal year 1993-94 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1993-94 fiscal year.

**Sec. 3.** Chapter 514 of the Session Laws of 1983 is repealed.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1679

## CHAPTER 642

### AN ACT TO MAKE SUNDRY AMENDMENTS RELATING TO LOCAL GOVERNMENTS IN ORANGE, CHATHAM, FORSYTH, AND NASH COUNTIES.

*The General Assembly of North Carolina enacts:*

#### PART 1. CHATHAM OCCUPANCY TAX.

**Section 1.** Occupancy tax. (a) *Authorization and scope.* The Chatham County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) *Collection.* Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the

county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.

(c) *Administration.* The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) *Penalties.* A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Chatham County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) *Use of tax revenue.* Chatham County shall use at least two-thirds of the net proceeds of the tax levied under this section to promote travel and tourism in Chatham County and shall use the remainder for tourism-related expenditures. The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, or a coliseum; and other expenditures that, in the judgment of the board of commissioners, will facilitate and promote tourism.

(f) *Effective date of levy.* A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) *Repeal.* A tax levied under this section may be repealed by a resolution adopted by the Chatham County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

## PART 2. ORANGE LOCAL GIS/QUALIFIED EXEMPTION.

Sec. 2. Section 2 of Chapter 285 of the 1991 Session Laws, as amended by Chapter 845 of the 1991 Session Laws, reads as rewritten:

"Sec. 2. This act applies to Brunswick, Catawba, ~~Johnston and Lincoln~~ Johnston, Lincoln, and Orange Counties and the Cities of Chapel Hill, Carrboro, Conover, Hickory, Lincolnton, and Newton only."

## PART 3. FORSYTH, NASH, AND ORANGE SCHOOL PROPERTY ACQUISITION.

Sec. 3. (a) Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, and as codified as G.S. 153A-157, reads as rewritten:

"§ 153A-157. *Power to acquire property in certain counties.*

(a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any other lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) This section applies to Bladen, Cabarrus, Carteret, Columbus, Duplin, Forsyth, Franklin, Iredell, Johnston, Nash, Orange, Pender, Richmond, Rowan, Sampson, and Stanly Counties."

(b) Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are located. A school administrative unit may also acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by it from the county in which it is located and contract for the construction, equipment, expansion, improvement, renovation, or repair or otherwise make available for use by it of such property or some part of such property upon such terms as may be agreed upon by it and such county.

(c) Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) G.S. 153A-157, as amended by subsection (a) of this section, is amended by adding a new subsection to read:

"(a1) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

(e) Subsections (b), (c), and (d) of this section apply only to Forsyth, Nash, and Orange Counties and to local boards of education for school administrative units in or for those counties. Subsection (c) of this section applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

#### PART 4. ORANGE IMPACT FEES.

**Sec. 4.** (a) G.S. 153A-331(b)(2), as it applies to Orange County under Section 17 of Chapter 460 of the Session Laws of 1987, reads as rewritten:

"(2) For purposes of this subsection, the term capital improvements includes the acquisition of land for open space and greenways, capital improvements to public streets, schools, bridges, sidewalks, bikeways, on and off street surface water drainage ditches, pipes, culverts, other drainage facilities, water and sewer facilities and public recreation facilities, facilities, and the term 'costs' includes obligations incurred or assumed for payments with respect to borrowed money and for payments under leases which are required to be capitalized in accordance with generally accepted accounting principles and under installment sale contracts in connection with such capital improvements."

(b) G.S. 153A-340(b)(2), as it applies to Orange County under Section 18 of Chapter 460 of the Session Laws of 1987, reads as rewritten:

"(2) For purposes of this subsection, the term capital improvements includes the acquisition of land for open space and greenways, capital improvements to public streets, schools, bridges, sidewalks, bikeways, on and off street surface water drainage ditches, pipes, culverts, other drainage facilities, water and sewer facilities and public recreation facilities, facilities, and the term 'costs' includes obligations incurred or assumed for payments with respect to borrowed money and for payments under leases which are required to be capitalized in accordance with generally accepted accounting principles and under installment sale contracts in connection with such capital improvements."

(c) Section 17.1 of Chapter 460 of the 1987 Session Laws, as rewritten by Chapter 324 of the 1991 Session Laws, reads as rewritten:

"Sec. 17.1. Section 17 of this act shall apply only to Orange County, and applies only within the planning jurisdiction of Orange County. Provided, however, any portion of an Orange County ordinance that contains a system of impact fees to provide for capital improvements to public schools within Orange County, applies everywhere in Orange County, including within the corporate limits and the extraterritorial planning jurisdiction of any city, town, or municipal corporation within Orange County. County, any such ordinance may provide that the term 'costs' includes obligations incurred or



assumed for payments with respect to borrowed money and for payments under leases which are required to be capitalized in accordance with generally accepted accounting principles and under installment sale contracts in connection with such capital improvements."

(d) Section 18.1 of Chapter 460 of the 1987 Session Laws, as rewritten by Chapter 324 of the 1991 Session Laws, reads as rewritten:

"Sec. 18.1. Section 18 of this act shall apply only to Orange County, and applies only within the planning jurisdiction of Orange County. Provided, however, any portion of an Orange County ordinance that contains a system of impact fees to provide for capital improvements to public schools within Orange County, applies everywhere in Orange County, including within the corporate limits and the extraterritorial planning jurisdiction of any city, town, or municipal corporation within Orange County. County, any such ordinance may provide that the term 'costs' includes obligations incurred or assumed for payments with respect to borrowed money and for payments under leases which are required to be capitalized in accordance with generally accepted accounting principles and under installment sale contracts in connection with such capital improvements.

Sec. 5. References in this Part to specific sections of the General Statutes are intended to be references to such sections as they may be amended from time to time. This Part shall be liberally construed to effectuate its purposes. Insofar as the provisions of this Part are inconsistent with general law, this Part shall control. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Part which can be given effect without the invalid provision or application, and to this end the provisions of this Part are severable.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1853

## CHAPTER 643

AN ACT TO AUTHORIZE CALDWELL COMMUNITY COLLEGE AND TECHNICAL INSTITUTE TO USE PART OF ITS BOND FUNDS FOR WATER AND SEWER LINES TO THE FACILITY.

*The General Assembly of North Carolina enacts:*

Section 1. Of the Community College Bond funds allocated in Chapter 542 of the 1993 Session Laws to Caldwell Community College and Technical Institute for a new classroom/lab building at the new Watauga Center, up to three hundred fifty thousand dollars (\$350,000) may be used for extensions of water and sewer lines necessary and normal to serve the new facility.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1563

## CHAPTER 644

AN ACT TO AMEND STATE INSURANCE AND MEDICAID LAWS TO COMPLY WITH THE FEDERAL OMNIBUS BUDGET RECONCILIATION ACT OF 1993 AND GUARANTEE THE CONTINUED AVAILABILITY OF FEDERAL MEDICAID FUNDS FOR THE STATE; AND TO MAKE A CORRESPONDING INSURANCE LAW AMENDMENT.

*The General Assembly of North Carolina enacts:*

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding the following new sections:

"§ 58-51-115. Coordination of benefits with Medicaid.

(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

- (1) 'Health benefit plan' means any accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement.
- (2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; and means a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974.

(b) No health insurer shall take into account that an individual is eligible for or is provided medical assistance in this or any other state under 42 U.S.C. § 1396a (section 1902 of the Social Security Act) in insuring that individual or making payments under its health benefit plan for benefits to that individual or on that individual's behalf.

"§ 58-51-120. Coverage of children.

(a) No health insurer shall deny enrollment of a child under the health benefit plan of the child's parent on any of the following grounds:

- (1) The child was born out of wedlock.
- (2) The child is not claimed as a dependent on the parent's federal income tax return.
- (3) The child does not reside with the parent or in the insurer's service area.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through a health insurer, the health insurer:

- (1) Must allow the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions.
- (2) Must enroll the child under family coverage upon application of the child's other parent or the Department of Human Resources in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless the health insurer is provided satisfactory written evidence that:

- a. The court or administrative order is no longer in effect; or
- b. The child is or will be enrolled in comparable health benefit plan coverage through another health insurer, which coverage will take effect not later than the effective date of disenrollment.

(c) If a child has health benefit plan coverage through the health insurer of a noncustodial parent, that health insurer shall do all of the following:

- (1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage.
- (2) Permit the custodial parent (or the health care provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent.
- (3) Make payments on claims submitted in accordance with subdivision (2) of this subsection directly to the custodial parent, the provider, or the Department of Human Resources.

(d) No health insurer may impose requirements on any State agency that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

"§ 58-51-125. Adopted child coverage.

(a) Definitions. -- As used in this section:

- (1) 'Child' means, in connection with any adoption or placement for adoption of the child, an individual who has not attained 18 years of age as of the date of the adoption or placement for adoption.
- (2) 'Placement for adoption' means the assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligations.

(b) Coverage Effective Upon Placement for Adoption. -- If a health benefit plan provides coverage for dependent children of persons covered by the plan, the plan shall provide benefits to dependent children placed with covered persons for adoption under the same terms and conditions that apply to the natural, dependent children of covered persons, irrespective of whether the adoption has become final.

(c) Restrictions Based on Preexisting Conditions at Time of Placement for Adoption Prohibited. -- A health benefit plan may not restrict coverage under the plan of any dependent child adopted by a covered person, or placed with a covered person for adoption, solely on the basis of any preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the covered person is eligible for coverage under the plan."

Sec. 2. G.S. 58-51-30 reads as rewritten:

"§ 58-51-30. Policies to cover newborn infants and ~~adopted~~ foster children.

(a) As used in this section:

- (1) 'Foster child' means a minor (i) over whom a guardian has been appointed by the clerk of superior court of any county in North Carolina; or (ii) the primary or sole custody of whom has been assigned by order of a court of competent jurisdiction.
- (2) 'Placement in the foster home' means physically residing with a person appointed as guardian or custodian of a foster child as long as that guardian or custodian has assumed the legal obligation for total or partial support of the foster child with the intent that the foster child reside with the guardian or custodian on more than a temporary or short-term basis.

~~(b) Every policy of insurance and every hospital service or medical service plan as defined in Articles 65 and 66 of this Chapter, and any health care plan operated by a health maintenance organization as defined in Article 67 of this Chapter (regardless of whether any of such policies or plans shall be defined as individual, family, group, blanket, franchise, industrial or otherwise) health benefit plan, as defined in G.S. 58-51-115(a)(1), that provides benefits on account of for any sickness, illness, or disability of any minor child or that provides benefits on account of for any medical treatment or service authorized or permitted to be furnished by a hospital under the laws of this State health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the policy, subscriber contract, or evidence of coverage with such a plan is in force. Adoptive Foster children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the adoptive home, regardless of whether a final decree of adoption has been entered; provided that a petition for adoption has been duly filed and is pursued to a final decree of adoption, foster home.~~

~~(c) Benefits in such insurance policies, plans, or evidence of coverage plans shall be the same for congenital defects or anomalies as are provided for most sicknesses or illnesses suffered by minor children which that are covered by the policies, plans, or evidence of coverage, plans. Benefits for congenital defects or anomalies shall specifically include, but not be limited to, all necessary treatment and care needed by individuals born with cleft lip or cleft palate.~~

~~(d) No policy or plan subscriber contract or evidence of coverage shall be approved by the Commissioner of Insurance pursuant to the provisions of this Article or the provisions of Articles 65, 66, and 67 of under this Chapter that does not comply with the provisions of this section.~~

~~(e) The provisions of this section apply both This section applies to insurers governed by the provisions of Articles 1 through 64 63 of this Chapter and to corporations governed by the provisions of Articles 65, 66, and 67 of this Chapter.~~

(f) This section and G.S. 58-51-125 shall be construed in *pari materia*."

Sec. 3. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new sections:

"§ 108A-69. Employer obligations.

(a) As used in this section and in G.S. 108A-70:



- (1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement.
- (2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; and means a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an employer doing business in this State, the employer:

- (1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.
- (2) Must enroll the child under family coverage upon application of the child's other parent or the Department of Human Resources in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.
- (3) May not disenroll or eliminate coverage of the child unless:
  - a. The employer is provided satisfactory written evidence that:
    1. The court or administrative order is no longer in effect; or
    2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or
  - b. The employer has eliminated family health benefit plan coverage for all of its employees.
- (4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services.

"§ 108A-70. Recoupment of amounts spent on medical care.

(a) The Department may garnish the wages, salary, or other employment income of, and the Secretary of Revenue shall withhold amounts from State tax refunds to, any person who:

- (1) Is required by court or administrative order to provide health benefit plan coverage for the cost of health care services to a child eligible for medical assistance under Medicaid; and
- (2) Has received payment from a third party for the costs of such services; but



(3) Has not used such payments to reimburse, as appropriate, either the other parent or guardian of the child or the provider of the services;  
to the extent necessary to reimburse the Department for expenditures for such costs under this Part; provided, however, claims for current and past due child support shall take priority over any such claims for the costs of such services.

(b) To the extent that payment for covered services has been made under G.S. 108A-55 for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the Department of Human Resources is considered to have acquired the rights of the individual to payment by any other party for those health care items or services."

**Sec. 4.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

**Sec. 5.** This act becomes effective October 1, 1994, and applies to each health benefit plan, as defined in this act, that is delivered, that is issued for delivery, or, on the next anniversary date of a health benefit plan policy or contract, that is renewed or continued in this State or covering persons residing in this State, on and after October 1, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1913

## CHAPTER 645

# AN ACT TO AUTHORIZE THE APPOINTMENT OF A SPECIAL BOARD OF EQUALIZATION AND REVIEW FOR IREDELL COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-322 reads as rewritten:

"§ 105-322. Iredell County board of equalization and review.

(a) ~~Personnel. -- Except as otherwise provided herein, the Board~~ Composed of Commissioners if Special Board not Appointed. -- If the board of county commissioners does not appoint a special board of equalization and review as provided in this section, the board of equalization and review of each county shall be composed of the members of the board of county commissioners.

(a1) Appointment of Special Board. -- Upon the adoption of a resolution so providing, the board of commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board. The special board shall be composed of five members and one alternate member. The board of commissioners shall also designate the chairman a chair and a vice chair from the membership of the special board. To be eligible for appointment to the special board, a person must have resided in Iredell County for at

least three years immediately preceding the appointment and the board of commissioners must find that the person has satisfactory knowledge of or experience in real estate, banking, farming, or other business management.

Members of the special board shall serve a term of one year. No member may serve more than six consecutive terms. Vacancies shall be filled by the board of county commissioners; a successor appointed to fill a vacancy shall serve for the remainder of the term.

~~The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners.~~ The resolution shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until for one year unless revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.

~~Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.~~

(b) Compensation. -- The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. -- Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.

(d) Clerk and Minutes. -- The assessor or a deputy designated by the assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, and shall give to the board such information as ~~he~~ the clerk may have or can obtain with respect to the listing and valuation of taxable property in the county.

(e) Time of Meeting. -- ~~Each~~ Except as otherwise provided in this subsection, each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July. The board shall complete its duties under subdivisions (g)(1) and (g)(2) of this section by the advertised adjournment date except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. Except in carrying out its duties under subdivision (g)(5) of this section, the board shall not increase the assessment of any property after July 31 of a year in which the county did not conduct a real property revaluation or after December 1 of a year in which the county conducted a real property revaluation. Following its

adjournment upon completion of its duties under subdivisions (g)(1) and (2) of this section, the board shall continue to meet to carry out the authority granted to the board of county commissioners under G.S. 105-325 as provided in subdivision (g)(5) of this section. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below, duties.

(f) Notice of Meetings and Adjournment. -- A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state ~~the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper.~~ Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment. that the board will meet at the dates and places necessary to fulfill its duties, and specify the date on which it will adjourn except to carry out its duties under subdivision (g)(5) of this section.

(g) Powers and Duties. -- The board of equalization and review shall have the following powers and duties:

(1) Powers and Duties. -- It shall be the duty of the board of equalization and review to Duty to Review Tax Lists. -- The board shall examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

- a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.
- b. Correct all errors in the names of persons and in the description of properties subject to taxation.
- c. Increase or reduce the appraised value of any property that, in the board's opinion, shall have been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised

value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

- d. Cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions of this Subchapter.
  - e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.
  - f. Give written notice to the taxpayer at his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).
- (2) Duty to Hear Taxpayer Appeals. -- On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others.
- a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.
  - b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.
  - c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.
  - d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on his appeal not later than 30 days after the board's adjournment.
- (3) Powers in Carrying Out Duties. -- In the performance of its ~~duties under subdivisions (g)(1) and (g)(2), above, duties,~~ the board of equalization and review may exercise the following powers:



- a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by him if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.
- b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chairman of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a misdemeanor and punished by a fine or by imprisonment or by both in the discretion of the court.

- c. The board may compromise, settle, and adjust the county's claim for taxes arising under G.S. 105-312 as provided in G.S. 105-312(k). In addition, if the governing body of a municipality adopts a resolution delegating to the county its power of compromise, the board may compromise, settle, and adjust the municipality's claim for taxes arising under G.S. 105-312.
- (4) Power to Submit Report. -- Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal.
- (5) Duty to Change Abstracts and Records After Adjournment. -- After adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this section, the board of equalization and review shall exercise the authority granted to the board of county commissioners under G.S. 105-325. This duty includes hearing appeals of the appraisal, situs, and taxability of classified motor vehicles pursuant to G.S. 105-330.2(b).

(h) Quorum; Reappraisal Year Panels. -- Except as provided in this subsection, a majority of the board members shall constitute a quorum for



the purpose of transacting any business. In any reappraisal year, the chair of the board of equalization and review may divide the board into two separate panels with a minimum of three members, which may include the alternate board member. The chair shall designate one member of each panel to serve as its chair and may change the members of the panels during the year. A majority of the members of each panel shall constitute a quorum for the purpose of transacting any business. A decision of a panel constitutes a decision of the board of equalization and review.

(i) Appeals. -- Decisions of the board of equalization and review may be appealed directly to the Property Tax Commission pursuant to G.S. 105-290."

Sec. 2. This act applies only to Iredell County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2022

## CHAPTER 646

### AN ACT TO ENABLE THE CITY OF GASTONIA TO DISSOLVE THE GASTONIA AIRPORT AUTHORITY.

*The General Assembly of North Carolina enacts:*

**Section 1. Termination.** The City of Gastonia may terminate and dissolve the Gastonia Airport Authority (hereinafter referred to as the "GAA"). It is the intent of this legislation to enable but not require the termination of the GAA.

**Sec. 2. Transfer of Real and Personal Property.** As part of the authority granted by this act, the City Council of the City of Gastonia may order the GAA to transfer to the City of Gastonia all real and personal property owned by the GAA. Upon the City Council's order to do so, the GAA shall execute any deeds, bills of sale, and any other necessary documents to effect such transfer of ownership to the City of Gastonia.

Notwithstanding the foregoing, ownership of all real and personal property shall automatically revert to the City of Gastonia upon the effective date of termination of the GAA.

**Sec. 3. Assignment of Executory Contracts.** As part of the authority granted in this act, the City Council may order the GAA to assign to the City of Gastonia within a certain time period all executory contracts to which the GAA is a party. Notwithstanding said order, all such executory contracts and the rights and obligations thereunder shall be deemed assigned to the City of Gastonia on the effective date of termination of the GAA.

**Sec. 4. Charter.** Any action by the City of Gastonia under this act to dissolve the GAA also repeals Section 9.3 of the Charter of the City of Gastonia, being Chapter 557 of the 1991 Session Laws, is repealed.

**Sec. 5.** This act prevails over Chapters 648 and 1158 of the 1981 Session Laws and Chapter 945 of the 1983 Session Laws.

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 453

## CHAPTER 647

AN ACT TO REPEAL THE REQUIREMENT FOR HEALTH CERTIFICATES FOR MARRIAGE LICENSE APPLICANTS AND TO EXEMPT HOME QUILTERS FROM CERTAIN REQUIREMENTS OF CHAPTER 130A OF THE GENERAL STATUTES.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 51-9 is repealed.

Sec. 2. G.S. 51-10 is repealed.

Sec. 3. G.S. 51-11 is repealed.

Sec. 4. G.S. 51-13 is repealed.

Sec. 5. G.S. 130A-261 reads as rewritten:

"§ 130A-261. *Definitions.*

The following definitions shall apply throughout this Part:

- (1) 'Bedding' means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other padded or stuffed item designed to be or commonly used for reclining or sleeping. This definition includes dual purpose furniture such as studio couches and sofa beds. The term 'mattress' does not include water bed liners, bladders or cylinders unless they contain padding or stuffing. The term 'mattress' also does not include quilts and comforters made principally by hand sewing or stitching in a home or community workshop.
- (2) 'Itinerant vendor' means a person who sells bedding from a movable conveyance.
- (3) 'Manufacture' means the making of bedding out of new materials.
- (4) 'New material' means any material or article that has not been used for any other purpose and by-products of industry that have not been in human use.
- (5) 'Previously used material' means any material of which previous use has been made, but manufacturing processes shall not be considered previous use.
- (6) 'Renovate' means the reworking or remaking of used bedding or the making of bedding from previously used materials, except for the renovator's own personal use or the use of the renovator's immediate family.
- (7) 'Sanitize' means treatment of secondhand bedding or previously used materials to be used in renovating for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.
- (8) 'Secondhand bedding' means any bedding of which prior use has been made.
- (9) 'Sell' or 'sold' means sell, have to sell, give away in connection with a sale, delivery or consignment; or possess with intent to sell, deliver or consign in sale."

Sec. 6. Sections 1 through 4 of this act become effective October 1, 1994, and apply to marriage license applications filed on or after that date. Section 5 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1685

## CHAPTER 648

## AN ACT TO AUTHORIZE THE CITY OF KINSTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

*The General Assembly of North Carolina enacts:*

**Section 1.** Occupancy Tax. (a) Authorization and scope. The Kinston City Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, by summer camps, or by businesses that offer to rent no more than five units.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Kinston City Council has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) Distribution and use of tax revenue. The City of Kinston shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Kinston-Lenoir County Tourism Development Authority created in Chapter 561 of the 1987 Session Laws, as amended by Chapters 576 and 770 of the 1989 Session Laws and Chapter 76 of the 1991 Session Laws. The Authority shall spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the City of Kinston through advertising and promotion, to sponsor tourist-oriented events and activities in the City of Kinston, and to finance tourist-related capital projects in the City of Kinston. As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, which may not exceed seven percent (7%) of the gross proceeds.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Kinston City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. The Kinston-Lenoir County Tourism Development Authority created in Chapter 561 of the 1987 Session Laws, as amended by Chapters 576 and 770 of the 1989 Session Laws and Chapter 76 of the 1991 Session Laws, may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The city council may from time to time determine an appropriate percentage of net proceeds that may be expended for administrative services.

The Authority shall report quarterly and at the close of the fiscal year to the city council on its receipts and expenditures for the preceding quarter and for the year in such detail as the council may require.

Sec. 3. Section 1(d) of Chapter 561 of the 1987 Session Laws reads as rewritten:

"(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section shall be subject to and pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a

~~misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Lenoir County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes."~~

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1970

## CHAPTER 649

AN ACT TO AMEND THE CHARTER OF THE CITY OF RALEIGH AS IT RELATES TO CERTAIN PURCHASES AND LEASES OF REAL PROPERTY BY CITY EMPLOYEES.

*The General Assembly of North Carolina enacts:*

Section 1. Section 33(b) of the Raleigh City Charter, Chapter 1184 of the 1949 Session Laws, as added by Chapter 312 of the 1991 Session Laws, reads as rewritten:

"(b) Notwithstanding the provisions of subsection (a), nothing herein shall be construed as preventing any official or employee covered by this section from purchasing a plot or plots from the city in a city-owned cemetery, nor shall any such official or employee be prohibited from participating in any rental or home ownership program sponsored or operated by the city, so long as the official or employee meets all the criteria for the program and so long as the income of the recipient does not exceed sixty-five percent (65%) of the median area income based on household size. Participants in such a program must commit to occupying the unit acquired or rented as their personal dwelling and must commit to reside there at least three years unless prevented from doing so by extraordinary circumstances such as divorce, transfer of job, or death. The award of any such housing assistance to an employee shall be noted in the minutes of the City Council. Furthermore, notwithstanding the provisions of subsection (a) of this section or any other law or ordinance, the city may establish a program in which sworn law enforcement officers may purchase or lease city-owned houses at or below market rates for their personal residences if the City Council first determines that certain geographical areas of the city would benefit from an increased visible police presence. Any such sales or leases are determined by the General Assembly to be for a public purpose. The City Council shall attach any conditions or restrictions to such sales or leases as it deems necessary to protect the integrity of the program and the law enforcement process."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.



H.B. 2019

## CHAPTER 650

## AN ACT TO ALLOW THE CITY OF ASHEVILLE TO DONATE UNCLAIMED BICYCLES TO CHARITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Notwithstanding Article 2 of Chapter 15 of the General Statutes, Article 12 of Chapter 160A of the General Statutes, or any provision of the city charter, whenever unclaimed bicycles are in the possession of the police department, no earlier than 30 days after the date of publication of the notice required by G.S. 15-12, the city may donate the bicycles to a charitable organization exempt under section 501(c)(3) of the Internal Revenue Code rather than selling the bicycles as provided by law. In such case, the notice required by G.S. 15-12 shall state the intended disposition of the bicycles if they are not claimed.

**Sec. 2.** This act applies to the City of Asheville only.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2032

## CHAPTER 651

## AN ACT RELATING TO SERVICE OF COMPLAINTS AND ORDERS IN HOUSING CODE CASES IN THE CITY OF ASHEVILLE AND TO AUTHORIZE THE CITY COUNCIL TO REQUIRE OWNERS OF RENTAL PROPERTY WITHIN THE CITY OF ASHEVILLE TO AUTHORIZE AN AGENT TO ACCEPT SERVICE OF PROCESS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Complaints or orders issued by a public officer pursuant to Part 5 or 6 of Article 19 of Chapter 160A of the General Statutes shall be served upon persons either personally or by registered or certified mail, and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is returned, but the regular mail is not returned by the post office within 10 days after mailing, service shall be deemed sufficient. The person mailing such complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be deemed conclusive in the absence of fraud.

A copy of any complaint under Part 6 of Article 19 of Chapter 160A of the General Statutes and a copy of any notice under G.S. 160A-428 shall be mailed by first-class mail by the city within two business days of mailing of the complaint or notice (or within two days of personal service if permitted by law) to:

- (1) The Land of Sky Regional Council;
- (2) Mountain Housing Opportunities, Inc.;
- (3) Neighborhood Housing Services of Asheville, North Carolina, Inc.;
- (4) Western North Carolina Habitat for Humanity, Inc.;

- (5) The Housing Authority of the City of Asheville;
- (6) The Historic Resources Commission of Asheville and Buncombe County; and
- (7) The Preservation Society of Asheville and Buncombe County, Inc.

The person mailing such copy shall certify that fact and the date thereof, and such certificate shall be deemed conclusive in the absence of fraud. The requirements of this paragraph do not apply as to any corporation if that corporation is dissolved.

**Sec. 2.** (a) The City Council may, by ordinance, require that each owner of rental property within the city authorize a person residing in the city to serve as his or her agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the city clerk, the authorized agent's name, address, and telephone number. The owner shall notify the city clerk of any changes in the information provided not less than 10 days after such changes have occurred. Nothing in this section requires an owner to designate an agent to accept service of process where the owner of the rental property resides within the city.

(b) This section applies to the City of Asheville only.

**Sec. 3.** Section 1 of this act applies to the City of Asheville only.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1632

## CHAPTER 652

### AN ACT TO INCORPORATE INTO THE CHARTER OF THE CITY OF ASHEVILLE AN AGREEMENT MAKING A FULL AND FINAL SETTLEMENT OF DISPUTED MATTERS RELATING TO THE AMOUNT OF FRANCHISE TAX DUE THE CITY BY TWO PUBLIC UTILITIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 389 of Chapter 16 of the Private Laws of 1923 is amended by adding the following immediately before the period at the end: "; provided, however, the imposition and payment of taxes, authorized by this section, on and by Carolina Power & Light Company and Public Service Company of North Carolina, Inc., their successors or assigns, shall be governed by that Agreement dated the 24th day of May 1994, by and among the City of Asheville, Carolina Power & Light Company, and Public Service Company of North Carolina, Inc., which Agreement was approved and authorized to be executed by the Asheville City Council by its Resolution Number 94-96, and which Agreement is spread upon the official minutes of the City Council of the same date".

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1683

## CHAPTER 653

## AN ACT TO INCREASE THE MONTHLY BENEFITS FROM THE NORTH CAROLINA FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 58-86-55 reads as rewritten:

"§ 58-86-55. *Monthly pensions upon retirement.*

Any member who has served 20 years as an 'eligible fireman' or 'eligible rescue squad worker' in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of one hundred ten dollars (~~\$100.00~~) (\$110.00) per month. Any retired fireman receiving a pension of fifty one hundred ten dollars (~~\$50.00~~) (\$110.00) per month shall, effective July 1, ~~1981~~, 1994, receive a pension of one hundred ten dollars (~~\$100.00~~) (\$110.00) per month.

Members shall pay five dollars (\$5.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No 'eligible rescue squad member' shall receive a pension prior to July 1, 1983. No person shall be entitled to a pension hereunder until his official duties as a fireman or rescue squad worker for which he is paid compensation shall have been terminated and he shall have retired as such according to standards or rules fixed by the board of trustees.

Any member who is totally and permanently disabled while in the discharge of his official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of his official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of one hundred ten dollars (~~\$100.00~~) (\$110.00) per month beginning the first month after his fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of his application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of five dollars (\$5.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

Any member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of five dollars (\$5.00) to the fund until he has paid into the fund the sum of one thousand two hundred dollars (\$1,200). The member shall upon attaining the age of fifty-five years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of his application annually thereafter.

Any member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, and because of such annexation is unable to perform as a fireman of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of five dollars (\$5.00) to the fund until he has paid into the fund the sum of one thousand two hundred dollars (\$1,200). The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

**Sec. 2.** This act becomes effective July 1, 1994, but is only effective if funds to implement it are appropriated in the Current Operations and Capital Improvements Appropriations Act of 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1901

## CHAPTER 654

AN ACT RESTORING THE DARE COUNTY BOARD OF EDUCATION  
TO SEVEN MEMBERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** (a) Beginning on the first Monday in December of 1994 the Dare County Board of Education shall consist of seven members. One member shall be an at-large member and may reside anywhere in the county, and the other six members shall reside in and represent the following districts:

District 1 -- This district shall consist of the mainland portion of the county and Roanoke Island and shall have two members.

District 2 -- This district shall consist of the town of Nags Head and all of Bodie Island south to Oregon Inlet, and the town of Kill Devil Hills and adjacent or nearby unincorporated areas to the west including, but not limited, to Colington Islands and Baum Bay Harbor. This district shall have two members.

District 3 -- This district shall consist of the towns of Kitty Hawk and Southern Shores and the remainder of the county west and north of the town of Southern Shores. This district shall have one member.

District 4 -- This district shall consist of Hatteras Island and shall have one member.

(b) The districts described in this section are intended to be the same as the districts adopted by the Dare County Board of Commissioners by resolution on February 7, 1992. If any questions should arise concerning

the boundaries of the districts, such disputes shall be resolved by reference to the maps and descriptions prepared for the Board of Commissioners.

**Sec. 2.** Except for the at-large seat, a person must reside in a district to be eligible to be a candidate, be elected, or serve as a member representing that district.

**Sec. 3.** All elections for the Board of Education shall be nonpartisan, with the results determined by a plurality with no run-offs. All voters in the county shall be eligible to vote for all seven seats on the board.

**Sec. 4.** The three members of the Board of Education elected in 1992 for terms to expire in 1996 shall serve the remainder of those terms. On the first Monday in December 1994, Allen Burrus is designated as the member from District 4, David Daniels as one of the two members from District 2, and Samuel Twiford, Jr., as the at-large member. If Mr. Burrus or Mr. Daniels resigns, dies, moves from his district, or otherwise vacates his office, the person appointed to fill the vacancy shall reside in the same district as the vacating member.

**Sec. 5.** Pursuant to Chapter 819 of the Session Laws of 1989, two members were elected in May 1994 to take office on the first Monday in December 1994. By July 15, 1994, those two new members shall be designated by the Board of Education as representatives of the districts described in Section 1 according to their residency, and upon taking office in December 1994, those two new members shall be considered representatives of the districts so designated.

**Sec. 6.** (a) Two additional members shall be elected to the Board of Education at the county general election to be held on November 8, 1994, and shall take office on the first Monday in December 1994. The seats to be elected in November shall be determined by the Board of Education after the two members elected in May 1994 have been designated as representatives of districts pursuant to Section 5. After determining which of the seven seats on the board, as described in Section 1, will be filled by the three holdover members elected in 1992 plus the two new members elected in May 1994, the Board of Education shall notify the Dare County Board of Elections to conduct the November 1994 election for the remaining two seats necessary to bring the board to the composition described in Section 1. The Board of Education shall notify the Board of Elections by July 22, 1994, which two seats are to be elected in November.

(b) The period in which candidates may file notices of candidacy for the November 1994 Board of Education election shall begin at noon on Monday, August 1, 1994, and close at noon on Friday, August 26, 1994.

**Sec. 7.** The members elected in May or November 1994 shall serve terms to expire in 1998.

**Sec. 8.** In 1996 three members shall be elected to the board as follows: the at-large member and one member each from Districts 2 and 4.

**Sec. 9.** In 1998 four members shall be elected to the board as follows: the at-large member, two members from District 1, and one member each from Districts 2 and 3. The candidate for the District 1 seat receiving the most votes shall be elected for a four-year term, and the candidate for the District 1 seat receiving the second highest number of votes shall be elected for a two-year term.



**Sec. 10.** In 2000 and every four years thereafter, four members shall be elected to the board as follows: the at-large member and one member each from Districts 1, 2, and 4.

**Sec. 11.** In 2002 and every four years thereafter, four members shall be elected to the board as follows: one member each from Districts 1, 2, and 3.

**Sec. 12.** Elections for the Board of Education in 1996 shall be held in May at the same time as party primaries for other county offices, and board members shall take office in December following the election as provided in general State law. In 1998 and subsequent years, elections shall also be held in May at the same time as party primaries for other county offices, but board members elected at that time shall take office at the first regular board meeting in July following the election. The terms of office of persons elected for terms to expire in 1998 and thereafter shall expire on the date of the first regular board meeting in July.

**Sec. 13.** Chapter 819 of the Session Laws of 1989 is repealed, but such repeal shall not affect the terms of members elected pursuant to that act except as specifically altered by this act.

**Sec. 14.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1536

## CHAPTER 655

AN ACT TO ALLOW PASQUOTANK COUNTY AND CHOWAN COUNTY TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, and as codified as G.S. 153A-157, reads as rewritten:

"§ 153A-157. *Power to acquire property in certain counties.*

(a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any other lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) This section applies to Bladen, Cabarrus, Carteret, Chowan, Columbus, Duplin, Franklin, Iredell, Johnston, Pasquotank, Pender, Richmond, Rowan, Sampson, and Stanly Counties."

**Sec. 1.1.** G.S. 153A-157, as amended by Section 1 of this act, is amended by adding a new subsection to read:

"(a) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county."

**Sec. 2.** Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are located.

**Sec. 3.** Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

**Sec. 4.** Sections 1.1, 2, and 3 of this act apply only to Pasquotank County and Chowan County and to local boards of education for school administrative units in or for those counties. Section 3 of this act applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

**Sec. 5.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 2126

## CHAPTER 656

### AN ACT TO ALLOW CLERKS OF COURT TO ACCEPT GOVERNMENT NOTES AS ACCEPTABLE COLLATERAL FOR DEPOSITS IN FINANCIAL INSTITUTIONS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 7A-112(a) reads as rewritten:

"(a) The clerk of the superior court may in his discretion invest moneys secured by virtue or color of ~~his~~ the clerk's office or as receiver in any of the following securities:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the State of North Carolina;
- (3) Obligations of North Carolina cities or counties approved by the Local Government Commission; and
- (4) Shares of any building and loan association organized under the laws of this State, or of any federal savings and loan association having its principal office in this State, and certificates of deposit for time deposits or savings accounts in any bank or trust company authorized to do business in North Carolina, to the extent in each instance that such shares or deposits are insured by the State or federal government or any agency thereof or by any mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes. If the clerk desires to deposit in a bank, saving and loan,

or trust company funds entrusted to ~~him~~ the clerk by virtue or color of ~~his~~ the clerk's office, beyond the extent that such deposits are insured by the State or federal government or an agency thereof or by any mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes, the clerk shall require such depository to furnish a corporate surety bond or ~~bonds~~ obligations of the United States ~~government~~ or obligations fully guaranteed both as to principal and interest by the United States or obligations of the State of North Carolina, or of counties and municipalities of North Carolina whose ~~bonds~~ obligations have been approved by the Local Government Commission."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.B. 1960

**CHAPTER 657**

AN ACT REQUIRING THE PAYMENT OF DELINQUENT TAXES IN ASHE COUNTY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO DELINQUENT TAXES.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Register of Deeds of Ashe County shall not receive for recordation any deed unless the deed is accompanied by a certificate from the Ashe County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid.

**Sec. 2.** This act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1653

**CHAPTER 658**

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM TO AUTHORIZE THE ACQUISITION OF PROPERTY THAT FAILS TO MEET THE MINIMUM HOUSING CODE IN ORDER TO PROVIDE HOUSING FOR PERSONS WITH LOW OR MODERATE INCOMES AND TO REMOVE THE LIMITATION ON PUNITIVE DAMAGES, AUTHORIZE THE TRIAL JUDGE TO GRANT INJUNCTIVE RELIEF, AND LENGTHEN THE TIME IN WHICH A COMPLAINANT MAY FILE A PRIVATE CAUSE OF ACTION IN HOUSING DISCRIMINATION CASES BROUGHT UNDER THE CITY'S FAIR HOUSING ORDINANCE.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, is amended by adding the following new section:

*"Sec. 74.1. Acquisition of Property by Eminent Domain.*

(a) In order to provide housing for persons of low and moderate income, the City shall have the power of eminent domain to acquire property on which is located a dwelling which the City Council or Housing Appeals Board has ordered to be either vacated and closed or removed or demolished.

(b) The City shall not institute an action to acquire property pursuant to this section until at least 30 days after the date of recording, in the office of the Register of Deeds, of the order by the City Council or Housing Appeals Board which ordered that the dwelling be either vacated and closed or removed or demolished.

(c) Before exercising the authority granted to it by this section, the City Council shall authorize a program to use condemned property for housing for persons of low and moderate income. The program shall: (i) include or identify sources of financing adequate to demolish or rehabilitate the dwellings acquired pursuant to this section; (ii) designate the geographical areas in which the program will be conducted; and (iii) describe other activities being conducted by or on behalf of the City of Durham within those areas to address housing needs or persons of low and moderate income.

(d) The provisions of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain authorized by this section. Vesting of title to the property taken under this section and right to possession thereto shall occur pursuant to the provisions of G.S. 40A-42(b).

(e) The initiation of an action to acquire property by eminent domain shall not prevent the City from exercising the powers granted to it by Part 6 of Article 19 of Chapter 160A of the General Statutes, as amended by this Charter and local act, with respect to the property that is the subject of the eminent domain action.

(f) Limitations or prohibitions, in any provision of general law, on the use or disposition of property acquired by eminent domain, including but not limited to G.S. 160A-279 and G.S. 160A-457, shall not apply to property acquired pursuant to this section. Buildings acquired pursuant to this section may be deemed to be 'private buildings' for purposes of any program of assistance and financing of rehabilitation and construction undertaken by the City principally for the benefit of low- and moderate-income persons.

(g) The authority contained in this section is in addition to and not in limitation of any other authority granted by this Charter or any other law."

**Sec. 1.1.** Section 121 of the Charter of the City of Durham, being Chapter 671, Session Laws of 1975, as amended by Chapter 373, Session Laws of 1983, Chapter 715, Session Laws of 1985, and Chapter 379, Session Laws of 1991, reads as rewritten:

"Sec. 121. Equal Housing. The City Council may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, familial status, or handicap in real estate transactions. Such ordinances may regulate or prohibit any act, practice, activity or procedure related, directly or indirectly to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of

housing on an equal basis to all persons; may provide that violations constitute a misdemeanor, and shall be punishable under G.S. 14-4; may subject the offender to civil penalties; and may provide that the City may enforce the ordinances by application to the General Court of Justice, Superior Court Division, for appropriate legal and equitable remedies, including but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorney's fees and ~~not more than one thousand dollars (\$1,000)~~ punitive damages, and the court shall have jurisdiction to grant such remedies."

**Sec. 1.2.** Section 121(b) of the Charter of the City of Durham, being Chapter 671, Session Laws of 1975, as amended by Chapter 373, Session Laws of 1983, reads as rewritten:

"(b) **Judicial Review of Committee Orders.** Judicial review of Committee orders other than arbitration awards shall be in accordance with Article 4 of Chapter ~~150A~~ 150B of the ~~North Carolina~~ General Statutes provided, however, that the provisions of G.S. ~~150A-45~~ 150B-45 notwithstanding, petitions for judicial review shall be filed in the Superior Court of Durham ~~County~~, County; provided, further, the provisions of G.S. 150B-51(b) notwithstanding, the trial court judge may grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper and the trial court judge may affirm, modify, or set aside, in whole or in part, the committee's order, or remand the order for further proceedings and enforce the order to the extent that the order is affirmed or modified. The term 'Agency,' whenever used in Article 4 of the Chapter ~~150A~~ 150B of the North Carolina General Statutes, shall mean the Committee(s) as authorized or created by the City Council of the City of Durham under the authority of this act."

**Sec. 1.3.** Section 124 of the Charter of the City of Durham, being Chapter 671, Session Laws of 1975, as amended by Chapter 373, Session Laws of 1983, reads as rewritten:

"Sec. 124. (a) **Civil Action for Unlawful Housing Practice.** An ordinance adopted pursuant to this act may permit any complainant ~~dissatisfied with the Committee's final disposition of a matter~~ to bring a civil action in the Superior Court Division of the General Court of Justice of Durham County against the person allegedly engaging in the unlawful practice. Such civil action for a housing practice ~~may not shall~~ be brought ~~more than 60 days after the complainant's receipt of notification of the Committee's final disposition of the matter,~~ no later than one year after an alleged discriminatory housing practice has occurred or terminated.

(b) **Injunctions; Equitable Relief.** If the court finds that the respondent has engaged in or is engaging in an unlawful housing practice charged in the ~~compliant,~~ complaint, the court may enjoin the respondent from engaging in such unlawful housing practice, award special damages, actual damages and ~~award not more than one thousand dollars (\$1,000) for additional~~ punitive damages."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.



H.B. 528

## CHAPTER 659

AN ACT TO CREATE THE OFFENSE OF THIRD DEGREE TRESPASS  
IN IREDELL COUNTY.*The General Assembly of North Carolina enacts:***Section 1.** Section 2 of Chapter 862 of the 1991 Session Laws reads as rewritten:**"Sec. 2.** This act applies only to ~~Rowan County~~, Iredell and Rowan Counties."**Sec. 2.** This act becomes effective December 1, 1993, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1682

## CHAPTER 660

AN ACT TO MAKE FURTHER SUNDRY AMENDMENTS RELATING  
TO LOCAL GOVERNMENTS IN ORANGE AND CHATHAM  
COUNTIES.*The General Assembly of North Carolina enacts:***PART 1. CHATHAM/NO BRIDGE FISHING.****Section 1.** (a) A county may adopt ordinances to prohibit or regulate fishing from any bridge for any purpose relating to public safety. Such an ordinance shall be enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

(b) This section applies only to Chatham County.

**PART 2. CARRBORO CAMPAIGN REPORTING.****Sec. 2.** The Charter of the Town of Carrboro, being Chapter 476, Session Laws of 1987, is amended by adding a new section to read:**"Section 2-7. Campaign Finance Reporting.** Notwithstanding G.S. 163-278.6(18) and G.S. 163-278.40(2), the provisions of Part 2 of Article 22A of Chapter 163 of the General Statutes, as they now exist or are hereafter amended, are applicable to municipal elections and election campaigns in the Town of Carrboro."

(b) This section is effective upon ratification, and applies to elections conducted beginning in 1995.

**PART 3. ORANGE PYROTECHNICS.****Sec. 3.** G.S. 14-410 reads as rewritten:**"§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; public exhibitions permitted; common carriers not affected.**

It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at public exhibitions, such as fairs, carnivals, shows of all descriptions and

public celebrations: provided, further, that the use of said pyrotechnics in connection with public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited, used or ~~discharged~~; discharged; provided, further, that such written authority from the board of commissioners is not required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill; provided, further, that it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business."

**Section 3.1.** G.S. 14-413 reads as rewritten:

*"§ 14-413. Permits for use at public exhibitions.*

For the purpose of enforcing the provisions of this article, the board of county commissioners of any county are hereby empowered and authorized to issue permits for use in connection with the conduct of public exhibitions, such as fairs, carnivals, shows of all descriptions and public exhibitions, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. Provided that no such permit shall be required for a public exhibition authorized by the University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill."

#### **PART 4. CHAPEL HILL-CARRBORO SCHOOL RECALL.**

**Sec. 4.** Any member of the Chapel Hill-Carrboro City Board of Education may be removed from office in the manner provided for in this Part.

**Sec. 5.** (a) Any registered voter of the Chapel Hill-Carrboro City School Administrative Unit may make and file with the Supervisor of Elections of the Board of Elections of Orange County an affidavit containing the name of the official whose removal is sought and a general statement of the grounds alleged for removal. The supervisor of elections shall thereupon deliver to the registered voter making such affidavit copies of petitions for demanding such a removal, printed forms of which the supervisor of elections shall keep on hand. Such blank forms shall be issued by the supervisor of elections with his or her signature thereto attached and shall be dated and addressed to the Board of Elections of Orange County, indicate the person to whom issued, state the name of the official whose removal is sought, and shall contain the general statement of the grounds on which the removal is sought as alleged in the affidavit.

(b) A copy of the petition shall be promptly delivered to the Superintendent of the Chapel Hill-Carrboro City School Administrative Unit, who shall enter the copy of the petition in a record book kept for that purpose in the office of the superintendent. A recall petition to be effective must be returned within 30 days after the filing of the affidavit, and to be sufficient must bear the signatures of registered voters of the school

administrative unit equal in number to at least ten percent (10%) of the registered voters of the school administrative unit as shown by the registration records of the last preceding general school administrative unit election.

(c) The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature the signer's place of residence, giving the residence address including town. One of the signers of each such paper shall take an oath before an officer competent to administer oaths that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(d) The Board of Elections of Orange County shall investigate the sufficiency of any such petition and certify the results of such investigation to the Board of Education. The Board of Elections may employ such persons as it deems necessary to undertake such investigations, and the reasonable cost of such investigation shall be reimbursed to the Board of Elections by the school administrative unit. The Board of Elections may adopt such rules and regulations as it deems necessary or advisable concerning the validation of signatures appearing on the recall petition.

(e) The Board of Elections shall complete its investigation and issue its certification of the results of such investigation within 15 days after the filing of any such petition. If, by the Board of Elections' certification, the petition is shown to be insufficient, it may be amended within 10 days from the date of said certificate. The Board shall, within 10 days after such amendment, make like examination of the amended petition, and if its certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect.

(f) Upon a determination that a sufficient recall petition has been submitted, the Board of Elections shall order and fix a date for holding a recall election. Subject to the remaining provisions of this subsection, any such election shall be held not less than 50 nor more than 70 days after the petition has been certified as being sufficient. If any other general or special election is scheduled within such period, the Board of Elections shall schedule the special election at the same time. If the provisions of general law prohibit the holding of special elections during the time aforesaid, and no general or special election is otherwise scheduled during said period of time, then the Board of Elections shall schedule the special recall election for some date within 10 days after the last day of the period of time during which special elections are prohibited by general law.

Notwithstanding the other provisions of this subsection, no recall election shall be scheduled during the time period beginning on the first Monday in July and ending on the last Monday in August in any calendar year.

If the 50- to 70-day time period during which an election is to be scheduled falls completely within the time period beginning on the first Monday in July and ending on the last Monday in August, the recall election shall be postponed and shall be scheduled within 10 days after the last Monday in August, unless otherwise prohibited by general law, in which case said election shall be scheduled within 10 days after the last day

of said period of time during which special elections are prohibited by general law.

If the 50- to 70-day time period during which an election is to be scheduled falls partially but not completely within the period from the first Monday in July to the last Monday in August, a recall election shall be scheduled during the time period either before the first Monday in July or after the last Monday in August which otherwise complies with the 50- to 70-day requirement unless otherwise prohibited by general law, in which case said election shall be scheduled within 10 days after the last day of said period of time during which special elections are prohibited by law.

(g) The Orange County Board of Elections shall cause legal notice of the election to be published, the notice to include the general statement of the grounds on which the recall is sought as alleged in the affidavit, and shall make all arrangements for holding such election in accordance with general law, and the same shall be conducted, returned, and the results thereof declared in all respects as other school administrative unit elections in the Chapel Hill-Carrboro City School Administrative Unit. The reasonable costs of such election shall be reimbursed to the Board of Elections by the school administrative unit.

(h) The question of recalling any number of officials may be submitted at the same election, but, as to each such official, a separate petition shall be filed and there shall be an entirely separate ballot.

(i) The ballots used in a recall election shall submit the following propositions in the order indicated:

\_\_\_\_ For the recall of (name and title of official)

\_\_\_\_ Against the recall of (name and title of official).

(j) If less than a majority of the votes cast on the question of recalling an official be for recall, the official shall continue in office for the remainder of the unexpired term, but, except as provided by Section 6(a) of this act, subject to the recall as before. If a majority of such votes be for the recall of the official designated on the ballot, the official shall, regardless of any defects in the recall petition, be deemed removed from office.

(k) If an official is removed from office as a result of a recall election, the vacancy so caused shall be filled in the manner provided by law for filling vacancies in such office. An official removed from office by the voters as a result of a recall election shall not be appointed to fill the vacancy caused by that official's own removal or resignation.

**Sec. 6.** (a) No recall petition shall be filed against an officer who has been subjected to a recall election, and not removed thereby, until at least one year after that election, and any such subsequent recall petition to be sufficient must bear the signatures of registered voters of the school administrative unit equal in number to at least twenty percent (20%) of the registered voters of the school administrative unit as shown by the registration records of the last preceding general school administrative unit election, and shall comply with all other requirements of this part.

(b) No recall petition shall be filed against an officer during either the first or last six months of the term of that office. If a person is serving only until an election shall be held to fill the office for the remainder of a term,

no recall petition shall be filed against that officer during the six month period before that election.

**Sec. 7.** Except as provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.B. 1377

## CHAPTER 661

AN ACT TO CONFORM THE THRESHOLD FOR DETERMINING IF A PENALTY APPLIES TO AN UNDERPAYMENT OF WITHHELD STATE INCOME TAXES TO THAT USED UNDER THE INTERNAL REVENUE CODE FOR DETERMINING IF A PENALTY APPLIES TO AN UNDERPAYMENT OF WITHHELD FEDERAL INCOME TAXES, AND TO CLARIFY THE TYPE OF INFORMATION A TAXPAYER MUST PROVIDE TO THE SECRETARY OF REVENUE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-163.6 reads as rewritten:

"§ 105-163.6. *When employer must file returns and pay withheld taxes.*

(a) General. -- A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or ~~within three banking days, semiweekly~~, as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. -- An employer who withholds an average of less than five hundred dollars (\$500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. -- An employer who withholds an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) ~~Three Banking Days, Semiweekly.~~ -- An employer who withholds an average of at least two thousand dollars (\$2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal income employment taxes withheld from attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal income employment



taxes ~~withheld from~~ attributable to the same wages. The date set by the Code for depositing or paying federal ~~income~~ employment taxes ~~withheld from wages~~ shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal ~~income~~ employment taxes ~~withheld from~~ attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal ~~income~~ employment taxes ~~withheld from~~ attributable to wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for ~~an underpayment of~~ a shortfall in the amount due if the employer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the employer files. ~~employer would not be subject to a failure-to-deposit penalty had the shortfall occurred in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.~~

(e) Category. -- The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule."

Sec. 2. G.S. 105-251 reads as rewritten:

"§ 105-251. ~~Information~~ Type of information a taxpayer must be furnished. ~~provide.~~

~~Each company, firm, corporation, person, association, copartnership, or public utility shall furnish the Secretary of Revenue in the form of returns prescribed by him, all information required by law and all other facts and information in addition to the facts and information in this act specifically required to be given, which the Secretary of Revenue may require to enable him to carry into effect the provisions of the laws which the said Secretary is required to administer, and shall make specific answers to all questions submitted by the Secretary of Revenue.~~

A taxpayer must give information to the Secretary when the Secretary requests the information. The Secretary may request a taxpayer to provide only the following kinds of information on a return, a report, or otherwise:

- (1) Information that identifies the taxpayer.
- (2) Information needed to determine the liability of the taxpayer for a tax.
- (3) Information needed to determine whether an item is subject to a tax.
- (4) Information that enables the Secretary to collect a tax.
- (5) Other information the law requires a taxpayer to provide or the Secretary needs to perform a duty a law requires the Secretary to perform."

**Sec. 3.** Section 1 of this act becomes effective January 1, 1995, and applies to payments of withheld income taxes made on or after that date. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 1619

**CHAPTER 662**

**AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DETERMINING CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS AND TO RESOLVE AN UNINTENDED CONFLICT BETWEEN THE STATUTE OF LIMITATIONS FOR CERTAIN TAX REFUNDS AND THE LAW ALLOWING DEDUCTIONS FOR CARRYBACKS, BAD DEBTS, AND WORTHLESS SECURITIES.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-228.90(b)(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of January 1, 1993, 1994, including any provisions enacted as of that date which become effective either before or after that date."

**Sec. 2.** G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code."

**Sec. 3.** In order to receive a refund that would be barred if not for the provisions of Section 2 of this act, the taxpayer must make or renew a demand for the refund on or after the date this act is ratified. For the

purpose of determining the interest on a refund demanded on or after the date this act is ratified, G.S. 105-266(b), as rewritten by Chapter 315 of the 1993 Session Laws, is effective retroactively for taxable years beginning on or after January 1, 1989.

**Sec. 4.** Section 1 of this act is effective for taxable years beginning on or after January 1, 1994. The remainder of this act is effective retroactively for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 1663

## CHAPTER 663

AN ACT TO AUTHORIZE THE ISSUANCE OF THIRTY-FIVE MILLION DOLLARS OF STATE PARKS BONDS OR NOTES AND TO APPROPRIATE THE PROCEEDS OF THESE BONDS AND NOTES FOR SPECIFIC STATE PARKS CAPITAL IMPROVEMENT PROJECTS AND LAND ACQUISITION.

*The General Assembly of North Carolina enacts:*

**Section 1.** *Legislative authorization to issue bonds.* -- In accordance with the requirements of Section 6(d) of Chapter 542 of the 1993 Session Laws (the "Bond Act"), the General Assembly hereby authorizes the issuance of thirty-five million dollars (\$35,000,000) State Parks Bonds authorized by the Bond Act and approved by the qualified voters of the State who voted on the question the first Tuesday after the first Monday of November 1993. The proceeds of State Parks Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "1994 State Parks Bonds Fund" and shall be disbursed as provided in this act.

**Sec. 2.** *Appropriation of bond proceeds.* -- In accordance with the requirements of Section 6(d) of the Bond Act, the General Assembly hereby appropriates the proceeds of the thirty-five million dollars (\$35,000,000) State Parks Bonds and notes for specific projects as provided in this act and subject to change as provided in this act. The proceeds of State Parks Bonds and notes shall be used for the purpose of paying the cost of capital improvements for new and existing State parks and recreation areas including, without limitation, land acquisition and the repair, renovation, and construction of visitors' centers, parking lots and access roads, dams, picnic areas, ranger residences, tent and trailer campsites, boat and canoe launching areas, rental cabins, boathouses, swimming facilities, trails, exhibits, storage buildings, water and wastewater systems, electrical systems, and underground fuel tanks. No more than thirty percent (30%) of the proceeds of the State Parks Bonds and notes, however, may be used for land acquisition.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the State Parks Bonds Fund

may be placed in the State Parks Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for the cost of State parks and recreation facilities including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

**Sec. 3.** *Allocations of funds for specific projects.* -- The proceeds of thirty-five million dollars (\$35,000,000) State Parks Bonds and notes shall be allocated and expended for paying the cost of State parks capital improvements, to the extent and as provided in this act and subject to change as provided in this act, as follows:

PARK	PROJECT	ALLOCATION
Carolina Beach State Park	Visitor Center	\$ 1,236,200
Cliffs of the Neuse State Park	Park Office	150,000
	Bathhouse and	
	Concessions Building	562,200
Crowders Mountain State Park	Visitor Center	1,470,600
Duke Power State Park	Community Building	332,500
Eno River State Park	Picnic Area Improvements,	
	Cole Mill Road	145,000
Fort Fisher State Recreation Area	Visitor Contact Station	329,300
Fort Macon State Park	Fort Restoration -	
	Phase I	879,500
	Design Funds for	
	Visitor Center	110,000
Goose Creek State Park	Visitor Center for	
	Environmental Education	
	Center	1,618,100
Hammocks Beach State Park	Maintenance Area	
	Improvements	118,400
Hanging Rock State Park	Visitor Center	1,799,400
Jockey's Ridge State Park	Concession Building	434,900
	Visitor Center	446,200
Jones Lake State Park	Water, Electric, and	
	Sewer Repair	146,500
Kerr Lake State Recreation Area	Development at	
	Kerr Lake	4,000,000
Lake James State Park	Maintenance Building	156,600
Lake Waccamaw State Park	Visitor Center	1,362,800

Lumber River State Park	Weir Control Structure Development at Princess Ann	15,000 1,013,000
Medoc Mountain State Park	Park Office, Campground, Maintenance Buildings	1,486,700
Merchants Millpond State Park	Picnic Area	306,400
Morrow Mountain State Park	Maintenance Area Improvements	357,600
Mount Jefferson State Park	Campground Improvements	817,489
Mount Mitchell State Park	Picnic Shelter	95,800
	Handicap Access	277,100
	Capital Projects and Renovations	216,800
New River State Park	Development at Site #3	450,000
Pettigrew State Park	West End Access Development	90,600
Pilot Mountain State Park	Sewer, Electric, Telephone, and Lake Study	246,800
Raven Rock State Park	Composting Toilets and Utility Repair	169,800
	Maintenance Complex	399,600
South Mountains State Park	Horse Camp Trailer Parking	163,900
	Picnic Shelters (2)	171,100
Stone Mountain State Park	Picnic Area	811,400
Waynesborough State Park	Grounds Improvement and Storage Building	95,776
Weymouth Woods State Nature Preserve	Exhibit Renovation	90,735
William B. Umstead State Park	Visitor Center	1,526,200
Statewide	Trailwork	400,000
<b>SUBTOTAL IMPROVEMENTS</b>		<b>\$ 24,500,000</b>
Bushy Lake State Natural Area	Land Acquisition	220,000
Crowders Mountain State Park	Land Acquisition	235,000
Duke Power State Park	Land Acquisition	415,000
Eno River State Park	Land Acquisition	2,350,000
Goose Creek State Park	Land Acquisition	55,000
Hammocks Beach State Park	Land Acquisition	275,000
Hanging Rock State Park	Land Acquisition	545,000
Jockey's Ridge State Park	Land Acquisition	275,000
Lake James State Park	Land Acquisition	77,000
Lumber River State Park	Land Acquisition	1,093,000
Medoc Mountain State Park	Land Acquisition	465,000
Merchants Millpond State Park	Land Acquisition	700,000
Morrow Mountain State Park	Land Acquisition	275,000
Mount Mitchell State Park	Land Acquisition	350,000
New River State Park	Land Acquisition	550,000
Raven Rock State Park	Land Acquisition	440,000



South Mountains State Park	Land Acquisition	1,090,000
Stone Mountain State Park	Land Acquisition	1,090,000
SUBTOTAL LAND ACQUISITION		<u>10,500,000</u>
GRAND TOTAL		\$ 35,000,000

Projected allocations set forth above may be adjusted to reflect the availability of other funds.

The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina State Parks System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular State park or recreation area within the aggregate amount of funds available under this section. The Director of the Budget may consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes. In addition, the particular capital improvements and the amount of the projected allocation therefor set forth above may be changed from time to time as the General Assembly may decide.

Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and g. of the Bond Act in connection with the issuance of bonds for that capital improvement or undertaking.

**Sec. 4.** The Department of Environment, Health, and Natural Resources shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the 1993 State Parks Bonds Fund.

**Sec. 5.** *Effective date.* -- This act becomes effective 1 July 1994.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 1700

## CHAPTER 664

### AN ACT TO ESTABLISH THE PERCENTAGE RATES FOR THE INSURANCE REGULATORY CHARGE AND THE PUBLIC UTILITY REGULATORY FEE.

*The General Assembly of North Carolina enacts:*

**Section 1.** The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven and twenty-five hundredths percent (7.25%) for the 1994 calendar year.

**Sec. 2.** The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is eight and one-half hundredths percent (0.085%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1994.

**Sec. 3.** Section 2 of this act becomes effective July 1, 1994. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 1378

## CHAPTER 665

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS, OR SUPPLEMENTS TO CAPITAL IMPROVEMENTS PROJECTS, OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL AND TO ENABLE THE UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE TO SET FEES AT A RATE SUFFICIENT TO FINANCE THE STUDENT ACTIVITIES CENTER.

*The General Assembly of North Carolina enacts:*

**Section 1.** The purpose of this act is to authorize construction by certain constituent institutions of The University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, of the capital improvements projects, or supplements to capital improvements projects, listed in this act for the respective institutions, and authorize the financing of these projects or project supplements with funds available to the institutions from gifts, grants, receipts, including patient receipts at the University of North Carolina Hospitals at Chapel Hill, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

**Sec. 2.** The capital improvements projects authorized by this act to be constructed and financed as provided in Section 1 of this act are as follows:

1. North Carolina State University
  - a. Partners Building \$ 9,658,000
  - b. Research IV Building 8,945,000
2. The University of North Carolina at Chapel Hill
  - a. The Sonja Haynes Stone Black Cultural Center 7,505,500
  - b. Addition and Renovations to the Carolina Inn 13,499,900
3. The University of North Carolina Hospitals at Chapel Hill
  - a. North Carolina Children's Hospital, North Carolina Women's Hospital, and Support Space - Phase 1 73,900,000

**Sec. 3.** The supplements to capital improvements projects authorized by this act to be constructed and financed as provided in Section 1 of this act are as follows. These projects were partially financed through proceeds available from the Education, Clean Water, and Parks Bond Act of 1993 and through appropriations of the General Assembly in a prior session.

1. North Carolina Central University
  - a. Chidley Hall Complex \$ 4,690,200
2. The University of North Carolina at Chapel Hill
  - a. Addition to the School of Dentistry 8,430,500
  - b. Lineberger Cancer Research Center Addition 8,000,000
  - c. School of Business Administration Building 14,653,600

## 3. Winston-Salem State University

a. Student Services/Cafeteria/Student Union Complex 6,378,350

**Sec. 4.** At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of or a change in the method of funding for any project or project supplement authorized by this act. In making a determination of whether to authorize a change in scope or funding, the Director of the Budget may consult with the Advisory Budget Commission. In no event may appropriations from the General Fund be used for a project authorized by this act, except for appropriations made by the General Assembly in a prior session.

**Sec. 5.** Section 4 of Chapter 1012 of the 1991 Session Laws reads as rewritten:

"Sec. 4. Until the debt incurred for the Student Activities Center authorized by Section 2(5)b of this act has been retired, the total required fees at the University of North Carolina at ~~Charlotte~~ Charlotte, excluding fees required in connection with revenue bonds issued to finance the Student Activities Center, may not exceed the average required fees for all of the constituent institutions of The University of North Carolina."

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1998

## CHAPTER 666

## AN ACT RELATING TO INVESTMENTS OF THE COUNTY OF DURHAM.

*The General Assembly of North Carolina enacts:*

**Section 1.** Part 3 of Article 3 of Chapter 159 of the General Statutes is amended by adding the following new section to read:

"§ 159-30.2. Investments by County.

Notwithstanding anything in this Part 3 to the contrary, a county may contract with any person, association, or corporation to invest, supervise, and manage the investment of idle funds of the county in one or more of the types of securities or other investments authorized in G.S. 159-30 and to purchase, sell, and exchange such securities or other investments on behalf of the county."

**Sec. 2.** This act applies only to Durham County.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1951

## CHAPTER 667

## AN ACT TO ALLOW THE TOWN OF BOONVILLE TO INSTALL SEWER LINES AND TO ALLOW WATAUGA COUNTY TO REPAIR THE WATAUGA HIGH SCHOOL PHYSICAL EDUCATION AND

# ATHLETIC FACILITIES PROJECT WITH ITS OWN CREW AND EQUIPMENT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 143-135 reads as rewritten:

"§ 143-135. *Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~seventy-five thousand dollars (\$75,000)~~ two hundred fifty thousand dollars (\$250,000). Such force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

**Sec. 2.** This act applies to the Town of Boonville and Watauga County only.

**Sec. 3.** This act applies only to the East Side Sewer Project in the Town of Boonville and the Watauga High School Physical Education and Athletic Facilities Project in Watauga County.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1535

## CHAPTER 668

# AN ACT TO EXEMPT CURRITUCK COUNTY AND THE WHALEHEAD PRESERVATION TRUST AND CURRITUCK WILDLIFE MUSEUM, INC., FROM CERTAIN STATUTORY REQUIREMENTS IN THE RENOVATION OF THE HISTORIC WHALEHEAD CLUB.

*The General Assembly of North Carolina enacts:*

**Section 1.** Notwithstanding any other provision of law, the County of Currituck and the Whalehead Preservation Trust and Currituck Wildlife Museum, Inc., may contract for the following design, renovation, and construction project without being subject to the requirements of G.S. 143-128, 143-129, 143-131, 143-132, 143-64.31, and 143-64.32:

- (1) The design and renovation of the historic Whalehead Club, located in Corolla, North Carolina, including renovation of the boathouse and adjacent boat basin area.

Sec. 2. This act is effective upon ratification and expires upon completion of the project or January 1, 2004, whichever comes first.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 2003

### CHAPTER 669

#### AN ACT TO PROHIBIT THE TAKING OF DEER WITH DOGS IN DURHAM COUNTY.

*The General Assembly of North Carolina enacts:*

Section 1. It is unlawful to take deer with the aid of dogs, unless the hunter has in his possession written permission of the owner of the land to take deer with dogs, and provided that the land is located within the geographic area designated by the Wildlife Resources Commission as an area in which taking deer with dogs is permitted.

Sec. 2. Violation of this act is a Class 3 misdemeanor.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 4. This act applies only to Durham County.

Sec. 5. This act becomes effective October 1, 1994.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 203

### CHAPTER 670

#### AN ACT TO REQUIRE THAT INDIVIDUALS AND BUSINESSES ENGAGED IN THE PRACTICE OF TATTOOING OBTAIN A PERMIT FROM THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

*The General Assembly of North Carolina enacts:*

Section 1. Article 8 of Chapter 130A is amended by adding the following new Part to read:

##### "Part 11. Tattooing.

##### "§ 130A-283. Tattooing regulated.

(a) Definition. -- As used in this Part, the term 'tattooing' means the inserting of permanent markings or coloration, or the producing of scars, upon or under human skin through puncturing by use of a needle or any other method.

(b) Prohibited Practice. -- No person shall engage in tattooing without first obtaining a tattooing permit from the Department. Licensed physicians, as well as physician assistants and nurse practitioners working under the supervision of a licensed physician, who perform tattooing within the normal



course of their professional practice are exempt from the requirements of this Part.

(c) Application. -- To obtain a tattooing permit, a person must apply to the Department. Upon receipt of the application, the Department, acting through the local health department, shall inspect the premises, instruments, utensils, equipment, and procedures of the applicant to determine whether the applicant meets the requirements for a tattooing permit set by the Commission. If the applicant meets these requirements, the Department shall issue a permit to the applicant. A permit is valid for one year and must be renewed annually by applying to the Department for a permit renewal.

(d) Violations. -- The Department may deny an application for a tattooing permit if an applicant does not meet the requirements set by the Commission for the permit. The Department may suspend, revoke, or refuse to renew a permit if it finds that tattooing is being performed in violation of this Part. In accordance with G.S. 130A-24(a), Chapter 150B of the General Statutes, the Administrative Procedure Act, governs appeals concerning the enforcement of this Part.

(e) Limitation. -- A permit issued pursuant to this Part does not authorize a person to remove a tattoo from the body of a human being. Compliance with this Part is not a bar to prosecution for a violation of G.S. 14-400."

Sec. 2. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, 'Wastewater Systems,' and for services performed pursuant to Part 10, Article 8 of this Chapter, 'Public Swimming Pools.' Pools', and for services performed pursuant to Part 11, Article 8 of this Chapter, 'Tattooing'. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

Sec. 3. G.S. 130A-29(c) reads as rewritten:

"(c) The Commission shall adopt rules:

- (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
- (2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o); G.S. 75A-6(o).
- (3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522; G.S. 115C-522.

- (4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General ~~Statutes; Statutes.~~
- (5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.
- (5a) Establishing eligibility standards for participation in Department reimbursement ~~programs; programs.~~
- (6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable ~~toilets; and toilets.~~
- (7) Establishing statewide health outcome objectives and delivery standards.
- (8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter."

Sec. 4. Sections 1 and 2 of this act become effective January 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 382

## CHAPTER 671

### AN ACT TO AMEND THE STATUTES REGULATING PROFESSIONAL ENGINEERS AND LAND SURVEYORS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 89C-3 reads as rewritten:

"§ 89C-3. *Definitions.*

~~When used in this Chapter, unless the context otherwise requires: The following definitions apply in this Chapter:~~

- (1) ~~'Board' shall mean the Board.~~ -- The North Carolina State Board of Registration for Professional Engineers and Land Surveyors provided for by this Chapter.
- (1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.
- (2) ~~'Engineer'.~~ -- ~~The term 'engineer,' within the intent of this Chapter, shall mean a Engineer.~~ -- A person who, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.
- (3) ~~'Engineer-in-Training'.~~ -- ~~The term 'engineer-in-training,' as used in this Chapter, shall mean a Engineer-in-training.~~ -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

- (4) ~~'Land Surveyor-in-Training'. -- The term 'land surveyor-in-training,' as used in this Chapter, shall mean a Land surveyor-in-training. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.~~
- (5) ~~'Person' means any Person. -- Any natural person, firm, partnership, corporation or other legal entity.~~
- (6) ~~'Practice of Engineering'. Practice of engineering. --~~
- a. ~~The term, 'practice of engineering,' within the intent of this Chapter, shall mean any Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.~~
- A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under this Chapter; or who holds himself out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.
- b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance.
- (7) ~~'Practice of land surveying' by registered land surveyors shall mean any Practice of land surveying by registered land surveyors.~~

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- a. Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and

the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.

- a. b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.
- (8) ~~'Professional Engineer'. -- The term, 'professional engineer,' as used in this Chapter, shall mean a Professional engineer. -- A~~ person who has been duly registered and licensed as a professional engineer by the Board established by this Chapter.
- (9) ~~'Registered land surveyor' shall mean a Registered land surveyor. -- A~~ person who, by reason of his special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, as herein defined, as attested by his registration as a registered land surveyor by the Board.
- (10) ~~'Responsible Charge'. -- This term means direct~~ Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Sec. 2. G.S. 89C-13(b)(1)f. reads as rewritten:

"f. Registration by Comity or Endorsement. -- A person holding a certificate of registration to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, he may be asked to take such examinations as the Board deems necessary to determine his qualifications, but in any event, he shall be required to pass a written examination of ~~not less than four hours' duration,~~ which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina."

Sec. 3. G.S. 89C-18 reads as rewritten:

"§ 89C-18. Reissuance of Duplicate certificates.

A new The Board may issue a duplicate certificate of ~~registration,~~ registration or certificate of ~~authorization,~~ authorization to replace any

certificate that has been lost, destroyed, or mutilated, may be issued, subject to the rules of the Board. A mutilated and may charge of five dollars (\$5.00) shall be made for such issuance. a fee of up to twenty-five dollars (\$25.00) for issuing the certificate."

Sec. 4. G.S. 89C-24 reads as rewritten:

"§ 89C-24. ~~Corporate or partnership~~ Registration of corporations and business firms that engage in the practice of engineering or land surveying.

A corporation or ~~partnership~~ business firm may not engage in the practice of engineering or land surveying in this State; provided, however, the person or persons connected with such corporation or partnership in charge of the designing or supervision which constitutes such practice is or are registered as herein required of professional engineers and registered land surveyors. The same exemptions shall apply to corporations and partnerships as apply to individuals under this Chapter, provided further, that all corporations hereunder shall be subject to the provisions of Chapter 55B of the General Statutes of North Carolina. State unless it is registered with the Board and has paid the required registration fee. A corporation or business firm is subject to the same duties and responsibilities as an individual registrant. Registration of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Sec. 5. G.S. 89C-14(c) reads as rewritten:

"(c) The certification fee for a corporation (see G.S. 89C-24) shall be is the amount set by the Board in accordance with Chapter 55B, G.S. 55B-10. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of registration of a corporation is the amount set by the Board in accordance with G.S. 55B-11. The fee for renewal of a certificate of registration for a business firm is the same as the renewal fee for a corporation."

Sec. 6. G.S. 89C-21(b) reads as rewritten:

"(b) The Board shall have the power to (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of registration under the provision of this section."

Sec. 7. G.S. 89C-22 reads as rewritten:

"§ 89C-22. Disciplinary action -- Charges; procedure.

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any individual registrant or against any corporation holding a certificate of authorization. Such Board registrant. The charges shall be in



writing and shall be sworn to by the person or persons making them and shall be filed with the secretary of the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the ~~Board or hearing officer~~ Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after such hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~individual's registrant's~~ certificate of registration, or a corporation's certificate of authorization pursuant to G.S. 89C-21, registration.

(d) ~~An individual registrant having a certificate of registration, or corporation holding a certificate of authorization, A registrant who is~~ aggrieved by a final decision of the Board, Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or corporation, an entity whose certificate has been revoked, for reasons it may deem sufficient, reissue a certificate of registration or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Sec. 8. G.S. 89C-10(f) reads as rewritten:

"(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a registrant is confidential until the Board issues a citation to the registrant. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no such funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and thereafter sit in deciding on any matter which may directly involve punitive action under such testimony."

Sec. 9. Section 8 of this act and this section are effective upon ratification. The remaining sections of this act become effective October 1, 1994.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 27

## CHAPTER 672

### AN ACT TO RESTRICT THE TRANSPORTATION OF CHILDREN UNDER THE AGE OF TWELVE IN THE OPEN BED OR OPEN CARGO AREA OF A VEHICLE.

*The General Assembly of North Carolina enacts:*

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall insure that no child under 12 years of age is transported in the bed or

cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section shall not apply when:

- (1) An adult is present in the bed or cargo area of the vehicle and is supervising the child;
- (2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner;
- (3) An emergency situation exists;
- (4) The vehicle is being operated in a parade pursuant to a valid permit.
- (5) The vehicle is being operated in an agricultural enterprise; or
- (6) the vehicle is being operated in a county which has no incorporated area with a population in excess of 3,500.

(c) Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars (\$25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section."

**Sec. 2.** The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this act and to inform the public on the requirements and penalties specified in this law.

**Sec. 3.** The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this act and shall include a report of findings in its report on highway safety no later than January 1, 1998.

**Sec. 4.** This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 945

## CHAPTER 673

AN ACT TO PERMIT THE USE OF DEADLY FORCE AGAINST AN INTRUDER UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE THAT A LAWFUL OCCUPANT DOES NOT HAVE A DUTY TO RETREAT FROM AN INTRUDER, AS PROVIDED AT COMMON LAW.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-51.1. Use of deadly physical force against an intruder.

(a) A lawful occupant within a home or other place of residence is justified in using any degree of force that the occupant reasonably believes is necessary, including deadly force, against an intruder to prevent a forcible entry into the home or residence or to terminate the intruder's unlawful entry (i) if the occupant reasonably apprehends that the intruder may kill or inflict serious bodily harm to the occupant or others in the home or residence, or (ii) if the occupant reasonably believes that the intruder intends to commit a felony in the home or residence.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder in the circumstances described in this section.

(c) This section is not intended to repeal, expand, or limit any other defense that may exist under the common law."

**Sec. 2.** This act becomes effective October 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 716

## CHAPTER 674

AN ACT TO MODIFY THE CORPORATE INCOME TAX CREDIT FOR CONSTRUCTION OF A COGENERATING POWER PLANT BY (1) PROVIDING THAT A PARTNERSHIP MAY QUALIFY FOR THE CREDIT, (2) CLARIFYING THAT A PARTNERSHIP MAY PASS AN INCOME TAX CREDIT THROUGH TO ITS PARTNERS, (3) EXPANDING THE CREDIT TO INCLUDE NATURAL GAS COGENERATING POWER PLANTS, (4) PROVIDING AN ALTERNATIVE METHOD TO CALCULATE THE CREDIT, (5) LIMITING THE AMOUNT OF CREDIT THAT MAY BE ALLOWED EACH YEAR EFFECTIVE BEGINNING IN 1994, AND (6) RESTRICTING THE CREDIT TO NATURAL GAS COGENERATING POWER PLANTS EFFECTIVE BEGINNING IN 1998.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-130.25 reads as rewritten:

"§ 105-130.25. *Credit against corporate income tax for construction of cogenerating power plants.*

Any corporation, except (a) Credit. -- A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), which that constructs a cogenerating power plant in North Carolina shall be allowed a tax is allowed as a credit against the tax imposed by this division Division an amount equal to ten percent (10%) of the costs required paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that plant; provided, that in order to secure plant. To be eligible for the credit allowed by this section, the taxpayer corporation or partnership must own or control such the power plant at the time of construction, and payment in part or in whole for such construction and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year

~~shall be limited to ten percent (10%) of such costs paid during the year, and the credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer, construction. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.~~

(a) Cogenerating Power Plant Defined. -- For purposes of this section, a cogenerating power plant is a power plant which that sequentially produces electrical or mechanical power and useful thermal energy from the same primary energy source. The tax credit provided for in allowed by this section is not allowed to a corporation which constructs does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, natural gas or liquid propane gas (LPG) as a primary fuel.

(b) Alternative Method. -- A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable."

Sec. 2. G.S. 105-130.25, as amended by Section 1 of this act, reads as rewritten:

*"§ 105-130.25. Credit against corporate income tax for construction of cogenerating power plants.*

(a) Credit. -- A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), that constructs a cogenerating power plant in North Carolina is allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the costs paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the costs were paid. To be eligible for the credit allowed by this section, the corporation or partnership must own or control the power plant at the time of construction. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the year reduced by the sum of all

credits allowed, except payments of tax made by or on behalf of the taxpayer.

(a) **Cogenerating Power Plant Defined.** -- For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy from the same primary energy source. The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel.

(b) **Alternative Method.** -- A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable.

(c) **Application.** -- To be eligible for the credit allowed in this section, a taxpayer must file an application for the credit with the Secretary on or before April 15 following the calendar year in which the costs were paid. The application shall be in the form prescribed by the Secretary and shall include any supporting documentation the Secretary may require. An application with respect to costs paid by a partnership must be made by the partnership on behalf of its partners.

(d) **Ceiling.** -- The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed five million dollars (\$5,000,000). The Secretary shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds five million dollars (\$5,000,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. In no case may the total amount of all tax credits allowed under this section for costs paid in a calendar year exceed five million dollars (\$5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be



carried forward and claimed for the next 10 taxable years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the costs for which a credit is claimed shall be considered as if they had been paid in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed."

**Sec. 3.** Article 9 of Chapter 105 of the General Statutes is amended by adding at the end a new section to read:

"§ 105-269.15. *Income tax credits of partnerships.*

(a) Pass-Through of Credit. -- A partnership may pass through to each of its partners the partner's distributive share of an income tax credit for which the partnership qualifies. Except as otherwise provided in this Chapter, all limitations on an income tax credit apply to the partnership, except the following:

- (1) The limitation that the credit may not exceed the amount of income tax imposed on the taxpayer.
- (2) A cap on the otherwise allowable amount of the credit, expressed as a specific maximum dollar amount or a specific percentage of tax imposed for the taxable year.

(b) Allowance of Credit to Partner. -- A partner's distributive share of an income tax credit passed through by a partnership is allowed to the partner only to the extent the partner would have qualified for the credit if the partner stood in the position of the partnership. All limitations on an income tax credit apply to each partner to the extent of the partner's distributive share of the credit, except that a corporate partner's distributive share of an individual income tax credit is allowed as a corporation income tax credit to the extent the corporate partner could have qualified for a corporation income tax credit if it stood in the position of the partnership. All limitations on an income tax credit apply to the sum of the credit passed through to the partner plus the credit for which the partner qualifies directly.

(c) Determination of Distributive Share. -- A partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code."

**Sec. 4.** G.S. 105-130.25(a1), as amended by this act, reads as rewritten:

"(a1) Cogenerating Power Plant Defined. -- For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy from the same using natural gas as its primary energy source. ~~The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel.~~"

**Sec. 5.** Section 4 of this act is effective for costs paid on or after January 1, 1998; Section 2 of this act is effective for taxable years beginning on or after January 1, 1994; the remainder of this act is effective for taxable years beginning on or after January 1, 1993.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 1436

## CHAPTER 675

AN ACT TO MAKE TECHNICAL and CLARIFYING CHANGES TO CHAPTER 576 OF THE 1993 SESSION LAWS (REGULAR SESSION 1994) CONCERNING THE TWO-YEAR MORATORIUM ON SPECIFIED FISHING LICENSES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 113-153.1(d) as amended by Chapter 576 of the 1993 Session Laws (Regular Session 1994) reads as rewritten:

"(d) The owner of a vessel licensed under G.S. 113-152 shall be eligible to purchase a vessel crab license for crabs as an alternative to the purchase of individual licenses under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The vessel crab license issued under this subsection shall be revoked when the owner or any other person using the owner's vessel is convicted of a violation under this section, except for subsection (b)."

**Sec. 2.** G.S. 113-153.1 is amended by adding a new subsection to read:

"(c1) Persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's crab license."

**Sec. 3.** Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws (Regular Session 1994) reads as rewritten:

"(a) Except as provided in subsections ~~(b) or (c)~~ (b), (c), or (c1) of this section, the Department shall not issue any new licenses for a two-year period beginning July 1, 1994, and ending June 30, 1996 under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-153.1. Crab License.
- (3) G.S. 113-154. Shellfish license
- (4) G.S. 113-154.1. Nonvessel endorsements to sell fish."

**Sec. 4.** Section 3 of Chapter 576 of the 1993 Session Laws (Regular Session 1994) is amended by adding a new subsection to read:

"(c1) The following exemptions shall apply to the moratorium:

- (1) The owner of a currently valid vessel license may transfer that license upon application to the Division of Marine Fisheries, Morehead City office, to:
  - a. Another vessel purchased by the owner of the original vessel license; or

- b. The purchaser of the vessel who is otherwise qualified to hold the license under this Article.
- (2) Any person previously exempt from the license requirements when accompanied by their parent or guardian holding the license and who is otherwise qualified, may be issued a Shellfish or Crab license upon application to the Division of Marine Fisheries, Morehead City office.
- (3) Non-vessel endorsement to sell licenses may be issued to the duly designated license agents for tournaments that meet the requirements of the rules of the Marine Fisheries Commission.
- (4) Vessel licenses may be issued on a charter vessel not previously licensed; provided that no vessel endorsement to sell be issued on that vessel."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 952

## CHAPTER 676

### AN ACT TO CHANGE THE LAW REGARDING HOSPITAL FACILITIES TO OFFER HEALTH CARE SERVICES IN BRANCH FACILITIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 131E-14.1 reads as rewritten:

"§ 131E-14.1. *Branch facilities.*

Notwithstanding anything in this Article, any county municipality organized under the provisions of this Article Part or Part C or any nonprofit corporation which leases or operates a hospital facility pursuant to an agreement with the municipality may erect, remodel, enlarge, purchase, finance, and operate branches and related facilities within this State but outside the boundaries of the county subject to the following limitations:

(1) No moneys derived from the exercise by the owning county municipality of its power of taxation shall be expended on facilities located outside its boundaries;

(2) No moneys derived from the issuance by the owning county municipality of its bonds or notes shall be expended on facilities located outside its boundaries;

(3) The owning county municipality shall not possess the power of eminent domain or have the right of condemnation with respect to hospital facilities located outside its ~~boundaries.~~ boundaries; and

(4) The power conferred on counties by G.S. 153A-169 and G.S. 153A-170 to adopt ordinances regulating the use of county-owned property and parking on county-owned property shall not extend to hospital facilities located outside its boundaries unless the board of commissioners of the county in which the facility is located shall by resolution permit any such ordinance to be applicable within its ~~jurisdiction;~~ jurisdiction.

~~(5) The owning county shall not be deemed liable, by virtue of operating hospital facilities outside its boundaries, for the cost of medical care of paupers who are legal residents of some other county;~~

~~(6) The authority granted by this section may not be exercised in any county that has within its borders four or more incorporated municipalities which qualify to receive funds under G.S. 136-41.2."~~

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 1418

## CHAPTER 677

AN ACT TO REORGANIZE EDUCATION REPORTS, TO CLARIFY THE TERMS FOR A SCHOLARSHIP LOAN UNDER THE PRINCIPAL FELLOWS PROGRAM AND TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE EDUCATION LAWS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 110-148(c)(5) reads as rewritten:

~~"(5) The State Board of Education shall, with the assistance of the Division of Community Schools, report to the General Assembly at the time of its convening on odd-numbered years the use of these funds and shall develop a State plan for the prevention of child abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House no later than January 1, 1987."~~

Sec. 2. G.S. 115C-21.1 reads as rewritten:

~~"§ 115C-21.1. Biennial report on civic literacy; other reports. Report on class size waivers.~~

~~(a) The State Superintendent of Public Instruction shall submit a biennial report to the General Assembly on the implementation of G.S. 115C-81(g).~~

~~(b) The Department of Public Instruction shall monitor and provide a report to the General Assembly by May 1, 1991, and annually thereafter showing the school units that have been granted class size waivers pursuant to G.S. 115C-238.6(a), have reported class size exceptions, and have converted State-funded teacher positions to other positions, dollars, or other expenditures."~~

Sec. 3. G.S. 115C-105.3 reads as rewritten:

~~"§ 115C-105.3. Purpose.~~

~~The purpose of the Commission is to develop high and clearly defined education standards for the public schools of North Carolina. These standards shall specify the skills and the knowledge that high school graduates should possess in order to be competitive in the modern economy. The purpose of the Commission is also to develop fair and valid assessments to assure that high school graduates in North Carolina meet these standards. No later than the Spring semester of the year 2000 or as soon as the State Board of Education adopts the standards and system of assessments, every graduating high school senior shall be required to achieve these standards as a condition for receiving a diploma.~~

These high standards and assessments shall focus on the key skills needed by students as they strive to be successful after high school and shall reflect the high expectations for every student demanded by the State's education mission in G.S. 115C-81(a), 115C-238.1, and 115C-238.13(a). Once these key skills are identified, parents, teachers, and the entire school community should be encouraged to help each student meet the student's fullest potential."

Sec. 4. G.S. 115C-105.5 reads as rewritten:

"§ 115C-105.5. *Reporting requirements.*

- (1) No later than July 1, ~~1994~~, 1994, and annually thereafter, the Commission shall provide ~~an initial a progress report on standards and assessments~~ to the General Assembly, the Governor, and the State Board of Education. This report shall ~~include progress~~ include:
  - a. Progress being made on the development of standards, benchmarks, and related ~~assessments~~. ~~It shall also include recommendations assessments;~~
  - b. Recommendations for the education and training of educators to ~~assist in incorporating standards into existing classrooms.~~ implement the standards and assessments;
  - c. An estimation of (i) the number of students each year who are unlikely to achieve at their potential and the cost of the actions that should be taken to enable these students to achieve at their potential, and (ii) the number of students who are unlikely to meet the performance standards for high school graduation each year and the cost of the actions that should be taken to enable these students to meet the standards; and
  - d. An implementation schedule that includes field testing of the assessments, a public awareness campaign, public release of the assessment data, and the development of designations on graduation diplomas to reflect a student's achievement in the standards.
- (2) No ~~later than July 1, 1996~~, The the Commission shall recommend to the State Board of Education standards and a system of ~~assessments, and if the State Board adopts the standards and system of assessments, the Commission and the State Board shall use the following schedule:~~
  - a. ~~In the Spring semester of the 1994-95 school year, a field or pilot test of the system of assessments shall be given in a limited number of school units.~~
  - b. ~~During the 1994-95 school year, school personnel shall be educated and trained to implement the system of assessments.~~
  - c. ~~During the 1994-95 school year, there shall be a public awareness campaign regarding the standards and assessments.~~
  - d. ~~In the 1995-96 school year, standards shall be implemented in all school systems, and in the Spring semester of the 1995-96 school year, the assessments shall be administered to all North Carolina high school seniors and in every local school administrative unit.~~



- ~~e. In the Spring semester of the 1995-96 school year, the first set of assessment data shall be released publicly.~~
  - ~~f. During the 1995-96 and subsequent school years, appropriate designations shall be implemented on the diplomas of graduation to reflect the students' achievement.~~
  - ~~g. No later than the Spring semester of the year 2000, every graduating high school senior shall be required to achieve these standards as a condition for receiving a diploma.~~
- assessments for the Board's consideration. No later than the year 2000 or as soon as the State Board of Education adopts the standards and system of assessments every graduating high school senior shall be required to achieve these standards as a condition for receiving a diploma.

- (3) ~~The Commission shall annually advise the General Assembly, the Governor, and the State Board of Education on the standards and assessments. In its report, the Commission shall estimate (i) the number of students each year who are unlikely to achieve at their potential and the cost of the actions that should be taken to enable these students to achieve at their potential, and (ii) the number of students who are unlikely to meet the performance standards for high school graduation each year and the cost of the actions that should be taken to enable these students to meet the standards."~~

Sec. 5. G.S. 115C-174.19 is repealed.

Sec. 6. G.S. 115C-238.17 reads as rewritten:

"§ 115C-238.17. *Annual assessment and reapproval of plans.*

(a) ~~Between March 15 and May 15~~ No later than May 31 of each subsequent year of the project, the projects shall submit to the Department of Public Instruction any data requested by the Department of Public Instruction or the State Board of Education and any proposed changes in the projects. ~~No later than May 30 each year, the~~ The Department shall review the data and the proposed changes in the plans for the projects and shall work with the project sites to assure that the plans carry out the provisions of this Part.

(b) ~~Between March 15 and June 1 of each subsequent year, the~~ The State Board of Education shall receive the data requested and the proposed changes in plans for projects from the project sites and shall receive the comments of the Department of Public Instruction regarding the data and the proposed changes in the projects. The State Board shall also consider the results of audits and evaluations performed pursuant to G.S. 115C-238.18.

(c) No later than ~~June~~ August 15 of each subsequent year, the State Board of Education shall reapprove the plans and any changes for the projects, reapprove the plans and any changes with modifications, or reject the plans.

(d) The project sites shall begin implementation immediately of projects reapproved, or reapproved with modifications, by the State Board."

Sec. 7. G.S. 115C-238.7(b) reads as rewritten:

"(b) The Task Force shall:

- (1) Monitor the implementation of the School Improvement and Accountability Act of 1989, as amended, especially the development and implementation of building-level plans;
- (2) Advise the Director of the Task Force on Site-Based Management on how to provide training and assistance to the public schools so as to facilitate the implementation of site-based management;
- (3) Review ~~by September 1, 1992,~~ publications produced by the Department of Public Instruction on the development and implementation of building-level plans;
- (4) Report annually to the General Assembly within the first week of the convening of the 1993 General Assembly and biennially thereafter and the Joint Legislative Education Oversight Committee on the implementation of site-based management in the public schools, ~~schools on the first Friday in December.~~ This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve site-based management."

Sec. 8. Section 8 of Chapter 778 of the 1989 Session Laws reads as rewritten:

"Sec. 8. The ~~Department of Public~~ State Board of Education shall report ~~prior to May 1, 1990, and annually on the first Friday in February thereafter,~~ on the implementation of the School Improvement and Accountability Act of 1989, to the Joint Legislative Education Oversight Committee, the chairmen chairs of the Senate and House of Representatives committees on education, appropriations, and appropriations on education."

Sec. 9. G.S. 115C-238.24 reads as rewritten:

"§ 115C-238.24. *Grants of flexibility by the State Board.*

In implementing local projects, local boards need broad decision-making authority so that local boards and participating school leadership teams can carry out the activities that meet the needs of students in that particular building. Each participating local school administrative unit may request from the State Board of Education, with specificity, those aspects of its project implementation that would be enhanced by flexibility with regard to statutes, policies, and regulations. Upon the recommendation of the State Superintendent, the State Board of Education may grant each local school administrative unit such flexibility with regard to Chapter 115C of the General Statutes, and its policies, and regulations, including the waivers allowed under G.S. 115C-238.6(a)(1) and (a)(2), as it finds necessary and appropriate to implement a local project so long as (i) the total amount of State funds expended for the project does not exceed the amount of State funds available for a school with that average daily membership; (ii) no health or safety standards relating to schools or school transportation are lowered; (iii) the State Board of Education does not find as a fact that the flexibility is being abused; (iv) the provisions of G.S. 115C-325 shall not be waived for any certificated teacher working in a Genesis school; and (v) the standard course of study is included in the education program offered to every child in the Genesis school.

Article 2A of Chapter 150B of the General Statutes shall not apply to actions by the State Board of Education when waiving its rules under this subsection.

The State Board of Education shall report annually on the first Friday in May on waivers granted with regard to statutes, policies, and regulations to the Joint Legislative Education Oversight Committee."

**Sec. 10.** G.S. 115C-325(i)(1) reads as rewritten:

"(1) The career teacher and superintendent will each have the right to designate not more than ~~30~~ 33 of the ~~424~~ 132 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify to the superintendent those Committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subdivision (h)(4) above shall contain a list of those members of the Committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right."

**Sec. 11.** G.S. 115C-290.5(a) reads as rewritten:

"(a) The Board shall administer this Article. In fulfilling this duty, the Board shall:

- (1) Develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Board.
- (2) Establish and collect an application fee not to exceed fifty dollars (\$50.00), and an exam fee not to exceed one hundred fifty dollars (\$150.00). Fees collected under this Article shall be credited to the General Fund as nontax revenue.
- (3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.
- (4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby qualified to be certified as public school administrators by the State Board of Education.
- (5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.
- (6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.
- (7) Submit an annual report by ~~March 1~~ December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

**Sec. 12.** (a) G.S. 116-74.43(b) reads as rewritten:

"(b) The State Education Assistance Authority shall forgive the loan and any interest accrued on the loan if, within six years after graduation from a school administrator program, exclusive of any authorized deferment for extenuating circumstances, the recipient serves for four years as a school

administrator at a North Carolina public school or at a school operated by the United States government in North Carolina. The SEAA shall also forgive the loan if it finds that it is impossible for the recipient to work for four years, within ~~10~~ six years after completion of the two-year school administrator program supported by the scholarship loan at a North Carolina public school, or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within ~~10~~ 12 years after completion of the two-year school administrator program supported by the scholarship loan. If the recipient completes the school administrator program, payment of principal and interest shall begin no later than 27 months after the completion of the program. Should a recipient present extenuating circumstances, the State Education Assistance Authority may extend the period to repay the loan in cash to no more than a total of 15 years."

(b) This section is effective upon ratification and applies to scholarship loan contracts entered into by the State Education Assistance Authority on or after January 1, 1994.

**Sec. 12.1.** G.S. 116C-3 reads as rewritten:

"§ 116C-3. *Strategic design for a continuum of education programs.*

The Education Cabinet shall develop a strategic design for a continuum of education programs. A continuum of education programs is the complement of programs delivered by the State to learners at all levels.

The new design shall take into account issues raised by the Government Performance Audit Committee of the Legislative Research Commission.

The design process shall:

- (1) Include vigorous examination of all programs as if they were being created for the first time.
- (2) Compare the existing structures, funding levels, and responsibilities of each system to the new design.
- (3) Focus on issues concerning coursework articulation and plan for how to improve coursework articulation among existing providers of education.

The Education Cabinet shall report to the Joint Legislative Education Oversight Committee on the strategic design it develops prior to January 1, 1995."

**Sec. 13.** Section 6 of Chapter 199 of the 1993 Session Laws reads as rewritten:

"Sec. 6. The Board of Governors shall report on the design for the programs and the proposal process created in accordance with G.S. 116-74.21 to the Joint Legislative Education Oversight Committee no later than December 1, 1993. Requests for proposals shall be disseminated to the constituent institutions no later than January 15, 1994. Proposals shall be submitted to the Board of Governors no later than June 1, 1994. The Board of Governors shall then reconvene the panel of experts to screen the submitted proposals. After its screening, the panel shall make recommendations by September 1, 1994, to the Board of Governors. The Board of Governors shall choose the institutions that shall have school administrator programs no later than November 1, 1994.

The Board of Governors shall report annually on the implementation of the act no later than December 1 of each year."

**Sec. 14.** Section 6 of Chapter 880 of the 1991 Session Laws reads as rewritten:

"Sec. 6. The Board of Governors shall coordinate a ~~A joint report of progress report made to develop a~~ on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter."

**Sec. 15.** Subsection (a) of Section 139 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 139. (a) Of the funds appropriated to Aid to Local School Administrative Units, the sum of two million five hundred thousand dollars (\$2,500,000) for the 1993-94 fiscal year and the sum of two million five hundred thousand dollars (\$2,500,000) for the 1994-95 fiscal year shall be used to provide grants for local school administrative units for locally designed innovative local programs to make schools safe for students and school employees. These funds shall be used for grants of from fifty thousand dollars (\$50,000) to one hundred thousand dollars (\$100,000) per year to local school administrative units. These funds may be used for continuing or noncontinuing expenses.

A local school administrative unit may apply for a grant, or two or three adjacent local school administrative units may apply jointly for a grant. Applicants for grants shall submit to the State Board of Education an application that includes the following information:

- (1) An assessment of local problems with regard to violence and harassment, including sexual and other forms of harassment, in the schools prepared by a local task force of educators, parents, students, community leaders, and representatives of social services and law enforcement, appointed by the local board of education.
- (2) A detailed plan for addressing these local problems, including proposed goals and anticipated outcomes, prepared after consultation with the task force.
- (3) A statement of how the grant funds would be used to address these local problems and what other resources would be used to address the problems.
- (4) A process for assessing on an annual basis the success of the local plan for addressing problems with regard to violence and harassment in the schools.

The Superintendent of Public Instruction shall appoint a State task force to assist the Superintendent in reviewing grant applications. The State task force shall include representatives of the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and nongovernmental agencies providing services to children, and other members the Superintendent deems appropriate. In reviewing grant applications, the Superintendent and the State task force shall consider the severity of the local problems with regard to violence in



the schools and the likelihood that the locally designed plan will deal with the problems successfully.

The State Board of Education shall consider the recommendations of the Superintendent in selecting grant recipients. The State Board shall also attempt to give grants to local school administrative units that are located geographically throughout the State, that have different demographic profiles, and that propose different approaches to their problems. The State Board shall select grant recipients prior to January 1, 1994.

The Superintendent of Public Instruction shall administer the grant program and provide technical assistance to grant applicants and recipients.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to March 15, 1994, ~~and prior to January 15, 1995~~ 1995, and October 1, 1995, and annually thereafter on how the funds are being used."

**Sec. 16.** (a) Section 7 of Chapter 210 of the 1993 Session Laws reads as rewritten:

"Sec. 7. This act becomes effective July 1, 1993, 1993, except that Sections 3, 5, and 6 become effective July 1, 1995."

(b) This section is effective upon ratification. This section does not apply to employment contracts entered into between a local school unit and an assistant principal between July 1, 1993, and the effective date of this act.

**Sec. 17.** Subsections (d) and (e) of Section 96 of Chapter 830 of the 1987 Session Laws are repealed.

**Sec. 18.** Subsections (d) and (e) of Section 96 of Chapter 752 of the 1989 Session Laws are repealed.

**Sec. 19.** Chapter 43 of the 1993 Session Laws is repealed.

**Sec. 20.** G.S. 115C-85 reads as rewritten:

"§ 115C-85. *Textbook needs are determined by course of study.*

When the State Board of Education has adopted, upon the recommendation of the Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks.

As used in this part, 'textbook' means systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process.

Textbooks adopted in accordance with the provisions of this Part shall be used by the public schools of the State."

**Sec. 21.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 626

## CHAPTER 678

AN ACT TO ADOPT RISK-BASED CAPITAL REQUIREMENTS FOR LIFE AND HEALTH INSURANCE COMPANIES, TO MAKE CORRECTIONS AND TECHNICAL AMENDMENTS IN THE INSURANCE LAWS, AND TO AMEND THE SCHOLARSHIP PROVISIONS OF THE FIREMEN'S RELIEF FUND IN THE INSURANCE CODE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 12 of Chapter 58 of the General Statutes is amended by adding the following sections:

**"§ 58-12-2. Definitions.**

As used in this Article, the following terms have the following meanings:

- (1) Adjusted Risk-Based Capital Report. -- A risk-based capital report that has been adjusted by the Commissioner under G.S. 58-12-6(c).
- (2) Corrective Order. -- An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.
- (3) Domestic Insurer. -- Any life or health insurance company organized in this State under Article 7 of this Chapter.
- (4) Foreign Insurer. -- Any life or health insurance company that is admitted to do business in this State under Article 16 of this Chapter but is not domiciled in this State.
- (5) Negative Trend. -- A negative trend over a period of time, as determined in accordance with the 'Trend Test Calculation' included in the risk-based capital instructions.
- (6) Risk-Based Capital Instructions. -- The risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- (7) Risk-Based Capital Level. -- An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:
  - a. 'Company Action Level Risk-Based Capital' means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.
  - b. 'Regulatory Action Level Risk-Based Capital' means the product of 1.5 and its authorized control level risk-based capital.
  - c. 'Authorized Control Level Risk-Based Capital' means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
  - d. 'Mandatory Control Level Risk-Based Capital' means the product of .70 and the authorized control level risk-based capital.

- (8) Risk-Based Capital Plan. -- A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the 'Revised Risk-Based Capital Plan'.
- (9) Risk-Based Capital Report. -- The report required in G.S. 58-12-6.
- (10) Total Adjusted Capital. -- The sum of:
  - a. An insurer's statutory capital and surplus; and
  - b. Such other items, if any, as the risk-based capital instructions may provide.

"§ 58-12-6. Risk-Based Capital Reports.

(a) Every domestic insurer shall, on or before each March 15 (the 'filing date'), prepare and submit to the Commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

- (1) With the NAIC in accordance with the risk-based capital instructions; and
- (2) With the insurance regulator in any state in which the insurer is authorized to do business, if the Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:
  - a. Fifteen days after the receipt of notice to file its risk-based capital report with that state; or
  - b. The filing date.

(b) An insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based instructions. The formula shall take into account (and may adjust for the covariance between):

- (1) The risk with respect to the insurer's assets;
- (2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (3) The interest rate risk with respect to the insurer's business; and
- (4) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

These risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(c) If a domestic insurer files a risk-based capital report that in the judgment of the Commissioner is inaccurate, the Commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report as adjusted is referred to as an 'adjusted risk-based capital report'.

"§ 58-12-11. Company Action Level Event.

(a) 'Company Action Level Event' means any of the following events:

- (1) The filing of a risk-based capital report by an insurer that indicates that:

- a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
  - b. The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend.
- (2) The notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge.
- (b) In the event of a company action level event, the insurer shall prepare and submit to the Commissioner a comprehensive financial plan that:
- (1) Identifies the conditions in the insurer that contribute to the company action level event.
  - (2) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event.
  - (3) Provides forecasts of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including forecasts of statutory operating income, net income, capital, or surplus (the forecasts for both new and renewal business should include separate forecasts for each major line of business and separately identify each significant income, expense, and benefit component).
  - (4) Identifies the key assumptions affecting the insurer's forecasts and the sensitivity of the forecasts to the assumptions.
  - (5) Identifies the quality of, and problems associated with, the insurer's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.
- (c) The risk-based capital plan shall be submitted:
- (1) Within 45 days after the company action level event; or
  - (2) If the insurer challenges an adjusted risk-based capital report pursuant to G.S. 58-12-30, within 45 days after notification to the insurer that the Commissioner has rejected the insurer's challenge.
- (d) Within 60 days after the submittal by an insurer of a risk-based capital plan to the Commissioner, the Commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or is, in the

judgment of the Commissioner, unsatisfactory. If the Commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the Commissioner. Upon notification from the Commissioner, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the revised risk-based capital plan to the Commissioner:

- (1) Within 45 days after notification from the Commissioner; or
- (2) If the insurer challenges the notification from the Commissioner under G.S. 58-12-30, within 45 days after a notification to the insurer that the Commissioner has rejected the insurer's challenge.

(e) In the event of a notification by the Commissioner to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the Commissioner may, subject to the insurer's right to a hearing under G.S. 58-12-30, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the Commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance regulator in any state in which the insurer is authorized to do business if:

- (1) That state has a risk-based capital provision substantially similar to G.S. 58-12-21(a); and
- (2) The insurance regulator of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:
  - a. Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or
  - b. The date on which the risk-based capital plan or revised risk-based capital plan is filed under G.S. 58-12-30(c).

"§ 58-12-16. Regulatory Action Level Event.

(a) 'Regulatory Action Level Event' means, with respect to any insurer, any of the following events:

- (1) The filing of a risk-based capital plan report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital.
- (2) The notification by the Commissioner to an insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection, if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, the notification by the Commissioner to the



insurer that the Commissioner has rejected the insurer's challenge.

- (4) The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the Commissioner and has cured the failure within 10 days after the filing date.
  - (5) The failure of the insurer to submit a risk-based capital plan to the Commissioner within the time period set forth in G.S. 58-12-11(c).
  - (6) Notification by the Commissioner to the insurer that:
    - a. The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the Commissioner, unsatisfactory; and
    - b. The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under G.S. 58-12-30.
  - (7) If the insurer challenges a determination by the Commissioner under subdivision (6) of this subsection pursuant to G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.
  - (8) Notification by the Commissioner to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan; but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the Commissioner has so stated in the notification, provided the insurer has not challenged the determination under G.S. 58-12-30.
  - (9) If the insurer challenges a determination by the Commissioner under subdivision (8) of this subsection pursuant to G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the challenge (unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer).
- (b) In the event of a regulatory action level event the Commissioner shall:
- (1) Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan.
  - (2) Perform such examination or analysis, as the Commissioner deems necessary, of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan.
  - (3) After the examination or analysis, issue an order specifying such corrective actions as the Commissioner shall determine are required (a 'Corrective Order').
- (c) In determining corrective actions, the Commissioner may take into account such factors as are deemed relevant with respect to the insurer based

upon the Commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

- (1) Within 45 days after the occurrence of the regulatory action level event;
- (2) If the insurer challenges an adjusted risk-based capital report pursuant to G.S. 58-12-30 and the challenge is not in the judgment of the Commissioner frivolous, within 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge; or
- (3) If the insurer challenges a revised risk-based capital plan under G.S. 58-12-30, within 45 days after notification to the insurer that the Commissioner has rejected the challenge.
- (d) The Commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the Corrective Order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the Commissioner.

"§ 58-12-21. Authorized Control Level Event.

(a) 'Authorized Control Level Event' means any of the following events:

- (1) The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital.
- (2) The notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.
- (4) The failure of the insurer to respond, in a manner satisfactory to the Commissioner, to a Corrective Order if the insurer has not challenged the Corrective Order under G.S. 58-12-30.
- (5) If the insurer has challenged a Corrective Order under G.S. 58-12-30 and the Commissioner has rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the Commissioner, to the Corrective Order after the rejection or modification by the Commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the Commissioner shall:

- (1) Take such actions as are required under G.S. 58-12-30 regarding an insurer with respect to which a regulatory action level event has occurred; or
- (2) If the Commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter. If the Commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions under this subdivision pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings.

"§ 58-12-25. Mandatory Control Level Event.

(a) 'Mandatory Control Level Event' means any of the following events:

- (1) The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital.
- (2) Notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.

(b) In the event of a Mandatory Control Level Event, the Commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter. The Mandatory Control Level Event is sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90-day period.

"§ 58-12-30. Hearings.

Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, and the notification constitutes a regulatory

action level Event with respect to the insurer; or (iii) notification to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or (iv) notification to an insurer by the Commissioner of a Corrective Order with respect to the insurer, the insurer has a right to a hearing, at which the insurer may challenge any determination or action by the Commissioner. The insurer shall notify the Commissioner of its request for a hearing within five days after the notification by the Commissioner under this section. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which date shall be no less than 10 days nor more than 30 days after the date of the insurer's request.

"§ 58-12-35. Confidentiality and prohibition on announcements.

(a) All risk-based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and the risk-based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the Commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer that are filed with the Commissioner constitute information that shall be kept confidential by the Commissioner. This information shall not be made public or be subject to subpoena, other than by the Commissioner, and then only for the purpose of enforcement actions taken by the Commissioner under this Article or any other provision of this Chapter.

(b) The General Assembly finds that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this Article, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation by any insurer, agent, broker, or other person engaged in any manner in the insurance business is prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurers' risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the Commissioner, with substantial proof, the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.



"§ 58-12-40. Supplemental provisions.

The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

"§ 58-12-45. Foreign insurers.

(a) Any foreign insurer shall, upon written request of the Commissioner, submit to the Commissioner a risk-based capital report as of the end of the calendar year just ended the later of:

(1) The date a risk-based capital report would be required to be filed by a domestic insurer under this Article; or

(2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the Commissioner, promptly submit to the Commissioner a copy of any risk-based capital plan that is filed with the insurance regulator of any other state.

(b) In the event of a company action level event or regulatory action level Event with respect to any foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or if no risk-based capital provision is in force in that state under the provisions of this Article, if the insurance regulator of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital statute or, if no risk-based capital provision is in force in that state, under G.S. 58-12-11, the Commissioner may require the foreign insurer to file a risk-based capital plan with the Commissioner. In that event the failure of the foreign insurer to file a risk-based capital plan with the Commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this State.

(c) In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation or liquidation statutes of the state or domicile of the foreign insurer, the Commissioner may make application to the Superior Court of Wake County as permitted under Article 30 of this Chapter with respect to the liquidation of property of foreign insurers found in this State; and the occurrence of the Mandatory Control Level Event is an adequate ground for the application.

"§ 58-12-50. Notices.

All notices by the Commissioner to an insurer that may result in regulatory action under this Article are effective upon dispatch if transmitted by registered or certified mail; or in the case of any other transmission are effective upon the insurer's receipt of the notice.

"§ 58-12-55. Phase-in provision.

For risk-based capital reports required to be filed with respect to 1994, the following requirements apply in lieu of the provisions of G.S. 58-12-11:

(1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action hereunder.



- (2) In the event of a regulatory action level Event under G.S. 58-12-16(a)(1), (2), or (3) the Commissioner shall take the actions required under G.S. 58-12-11.
- (3) In the event of a regulatory action level Event under G.S. 58-12-16(a)(4), (5), (6), (7), (8), or (9) or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.
- (4) In the event of a Mandatory Control Level Event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer."

Sec. 2. The heading of Article 12 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 12.

"Guaranty Fund for Domestic Companies.  
"Risk-Based Capital Requirements."

Sec. 3. G.S. 58-2-105 reads as rewritten:

"§ 58-2-105. *Confidentiality of medical records.*

All ~~privileged~~ patient medical records in the possession of the Department ~~shall be~~ are confidential and ~~shall not be~~ are not public records pursuant to G.S. 58-2-100 or G.S. 132-1. As used in this section, 'patient medical records' includes personal information that relates to an individual's physical or mental condition, medical history, or medical treatment, and that has been obtained from the individual patient, a health care provider, or from the patient's spouse, parent, or legal guardian."

Sec. 4. G.S. 58-3-75 reads as rewritten:

"§ 58-3-75. *Loss and loss expense reserves of fire and marine insurance companies.*

In any determination of the financial condition of any fire or marine or fire and marine insurance company authorized to do business in this State, such company shall be charged, in addition to its unearned premium liability as prescribed in ~~G.S. 58-3-70~~, G.S. 58-3-71, with a liability for loss reserves in an amount equal to the aggregate of the estimated amounts payable on all outstanding claims reported to it which arose out of any contract of insurance or reinsurance made by it, and in addition thereto an amount fairly estimated as necessary to provide for unreported losses incurred on or prior to the date of such determination, as defined in G.S. 58-3-81(a), and including, both as to reported and unreported claims, an amount estimated as necessary to provide for the expense of adjusting such claims, and there shall be deducted, in determining such liability for loss reserves, the amount of reinsurance recoverable by such company, in respect to such claims, from assuming insurers in accordance with G.S. 58-7-21. Such loss and loss expense reserves shall be calculated in accordance with any method adopted or approved by the NAIC, unless the Commissioner determines that another more conservative method is appropriate."

Sec. 5. G.S. 58-3-90 reads as rewritten:

"§ 58-3-90. *Revocation of license of foreign company; publication of notice.*

If the Commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound ~~condition,~~

condition; or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities; or that it the company has failed to comply with the law, or if it, its officers or agents, statutes, rules, or orders applicable to it; or if the company, its officers, employees, agents, or other representatives refuse to submit to examination or to perform any legal obligation in relation thereto, to an examination, he shall revoke or suspend all certificates of authority granted to it licenses and authority to do business granted to the company or its agents, and shall cause notification thereof to be published in one or more newspapers published give written notification of the revocation or suspension to all of the company's agents in this State; and no new business may thereafter be done by it the company or its agents in this State while such default or disability continues, or until its until the company's license and authority to do business is restored by the Commissioner."

Sec. 6. G.S. 58-3-172(a) reads as rewritten:

"(a) For all claims denied for ~~health~~ health care provider services under health benefit plans, written notification of the denied claim shall be given to the insured and to the health care provider submitting the claim if the health care provider would otherwise be eligible for payment."

Sec. 7. Article 5 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-5-71. Liens of policyholders; subordination.

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims."

Sec. 8. G.S. 58-7-21(b)(4)a. reads as rewritten:

"(4) a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000). In the case of a group of insurers, which includes individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the

group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent certified public accountants."

**Sec. 9.** G.S. 58-7-31(b)(7)a. reads as rewritten:

"(7) a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision (7)b. of this ~~section~~ section) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner that legally segregates, by contract or contractual provisions, the ~~underlying assets~~ assets."

**Sec. 10.** The catch line of G.S. 58-7-150 reads as rewritten:

"§ 58-7-150. ~~Merger or consolidation.~~ Consolidation."

**Sec. 11.** G.S. 58-7-163(6) reads as rewritten:

"(6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost of ~~or~~ carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter."

**Sec. 12.** G.S. 58-7-170(c) reads as rewritten:

"(c) The cost of investments made by insurers in mortgage loans, authorized by G.S. 58-7-179, with any one person shall not exceed the lesser of five percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not invest in additional mortgage loans without the Commissioner's consent if the admitted value of all mortgage loans held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the admitted assets of the insurer.

An insurer that, as of October 1, 1993, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, 1994, a plan to bring the amount of mortgage investments ~~with that person~~ into compliance with the limitations by January 1, 2001."

**Sec. 13.** G.S. 58-13-10 reads as rewritten:

"§ 58-13-10. *Scope.*

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to comply in substance with the requirements and limitations of this section. This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance ~~regulator~~ regulatory agencies as a requirement for doing business in such jurisdictions."

**Sec. 14.** G.S. 58-19-25(a) reads as rewritten:

"(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to the registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and G.S. 58-19-30(a), 58-19-30(b), 58-19-30(c), and 58-19-30(d), or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition. The insurer shall also file a copy of its registration statement and any amendments to the statement in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March 1 of each year for the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within the extended time. All registration statements shall contain a summary, on a form prescribed by the Commissioner, outlining all items in the current registration statement representing changes from the prior registration statement. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulator of its domiciliary jurisdiction."

Sec. 15. G.S. 58-21-20(a)(2)b. reads as rewritten:

"b. In the case of any Lloyd's plans or other similar unincorporated group of insurers, which includes individual insurers, maintains a trust fund of not less than fifty million dollars (\$50,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and".

Sec. 16. G.S. 58-21-35 reads as rewritten:

"§ 58-21-35. *Duty to file evidence of insurance and affidavits.*

Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall execute and file with the Commissioner:

- (1) A written report regarding the insurance and including the following information:
  - a. The name and address of the insured;
  - b. The identity of the insurer or insurers;
  - c. A description of the subject and location of the risk;
  - d. The amount of premium charged for the insurance; and
  - e. Such other pertinent information as the Commissioner may reasonably require; and
- (2) An affidavit as to the efforts to place the coverage with admitted insurers and the results thereof in accordance with G.S. 58-21-15.

The report and affidavit required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner, Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

**Sec. 17.** G.S. 58-30-275(b) reads as rewritten:

"(b) The Court may issue an order appointing an ancillary receiver in whatever terms it deems to be ~~appropriate~~, appropriate, including provisions for payment of the reasonable and necessary expenses of the proceedings. The filing or recording of the order with a register of deeds in this State imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds."

**Sec. 18.** G.S. 58-33-130(f) is repealed.

**Sec. 19.** G.S. 58-34-2(d)(9) reads as rewritten:

"(9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or by any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under subsection ~~(m)~~ (f) of this section."

**Sec. 20.** Article 35 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-35-100. Fees are nonrefundable.

All fees that are imposed and collected under this Article are nonrefundable."

**Sec. 21.** G.S. 58-40-140(a) reads as rewritten:

"(a) Any policy for commercial general liability coverage or professional liability insurance wherein the insurer offers, and the insured elects to purchase, an extended reporting period for claims arising during the expiring policy period must provide:

- (1) That in the event of a cancellation permitted by G.S. 58-41-15 or nonrenewal effective under G.S. 58-41-20, there shall be a 30-day period ~~before~~ after the effective date of the cancellation or nonrenewal during which the insured may elect to purchase coverage for the extended reporting period.
- (2) That the limit of liability in the policy aggregate for the extended reporting period shall be one hundred percent (100%) of the expiring policy aggregate.
- (3) Within 45 days after the mailing or delivery of the written request of the insured, the insurer shall mail or deliver the following loss information covering a three-year period:
  - a. Aggregate information on total closed claims, including date and description of occurrence, and any paid losses;
  - b. Aggregate information on total open claims, including date and description of occurrence, and amounts of any payments;
  - c. Information on notice of any occurrence, including date and description of occurrence."



Sec. 22. G.S. 58-41-10(a) reads as rewritten:

"(a) Except as otherwise provided, this Article applies to all kinds of insurance authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all insurance companies licensed by the Commissioner to write those kinds of insurance. This Article does not apply to insurance written under Articles 21, 36, 37, 45 or 46 of this Chapter; ~~insurance written under G.S. 58-7-15(7), (13), or (14) when burglary and theft insurance or personal injury or property damage insurance is written for residential risks in conjunction with insurance written under Article 36 of this Chapter;~~ to marine insurance as defined in G.S. 58-40-15(3); to personal inland marine insurance; to aviation insurance; to policies issued in this State covering risks with multistate locations, except with respect to coverages applicable to locations within this State; to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State; nor to domestic insurance companies, associations, orders, or fraternal benefit societies doing business in this State on the assessment plan."

Sec. 23. G.S. 58-48-95 reads as rewritten:

"§ 58-48-95. *Use of deposits made by insolvent insurer.*

(a) Notwithstanding any other provision of ~~Articles 1 through 64~~ of this Chapter pertaining to the use of deposits made by insurance companies for the protection of policyholders, ~~the Commissioner shall deliver to the Association, and the Association is hereby authorized to shall receive, upon its request, from the Commissioner and may expend, any deposit or deposits previously or hereinafter made, whether or not required by statute, by an insolvent insurer to the extent those deposits are needed by the Association first to pay the covered claims as required by this Article and then to the extent those deposits are needed to pay all expenses of the Association relating to the insurer: Provided that before delivering any deposit to the Association the Commissioner may retain and use an amount of the deposit up to five thousand dollars (\$5,000) ten thousand dollars (\$10,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-5-70. As used in this section, the term 'administrative costs' does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-30-60(c), 58-30-75, or 58-30-120.~~

(b) ~~However, in In, however~~ the case of a deposit made by an insolvent domestic insurer, the Association shall receive, upon its request, from the Commissioner, the portions of the deposit made for the protection of policyholders having covered claims shall be delivered by the Commissioner to the Association, claims. As for the general deposit, said those portions shall be in the proportions that the insolvent domestic insurer's domestic net direct written premiums for the preceding calendar year on the kinds of insurance in the account bears to its total net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

(c) The Association shall account to the Commissioner and the insolvent insurer for all deposits received from the Commissioner ~~hereunder under this section,~~ and shall repay to the Commissioner a portion of the deposits

~~received~~ received, which shall be equal to the total amount of the claims against the insolvent insurer that are not covered claims under this Article solely by reason that the amount of the claim is fifty dollars (\$50.00) or less. ~~Said This repayment shall in no way does not~~ prejudice the rights of the Association with regard to the portion of the deposit repaid to the Commissioner. After all of the deposits of the insolvent insurer received by the Association under this section have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article."

Sec. 24. G.S. 58-50-130(a)(4a) reads as rewritten:

"(4a) A carrier may continue to enforce reasonable employer participation and contribution requirements on small employers applying for coverage; however, participation and contribution requirements may vary among small employers only by the size of the small employer group and shall not differ because of the health benefit plan involved. In applying minimum participation requirements to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether an applicable participation level is met. 'Qualifying existing coverage' means benefits or coverage provided under: (i) Medicare, Medicaid, and other government funded programs; or (ii) an employer-based health insurance or health benefit arrangement, including a self-insured plan, that provides benefits similar to or in excess of benefits provided under the basic health care plan. An accountable health carrier shall not enforce participation or contribution requirements on member small employers, as defined in G.S. 143-622(18), unless those requirements meet with the standards adopted by the ~~North Carolina Health State Health Plan Purchasing Alliance Board.~~"

Sec. 25. G.S. 58-50-130(a)(5) reads as rewritten:

"(5) Notwithstanding any other provision of this Chapter, no small employer carrier, insurer, subsidiary or an insurer, or controlled individual of ~~a an insurance holding company~~ shall act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of ~~a an insurance holding company~~ shall provide stop loss, catastrophic, or reinsurance coverage to small ~~groups which, if they were purchased, would be subject to this section.~~ employers that does not comply with the underwriting, rating, and other applicable standards in this Act."

Sec. 26. Article 62 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-62-77. Actions not precluded."

Nothing in this Article precludes any resident from bringing any action against the Association in any court of competent jurisdiction with respect to any contractual obligation arising under covered policies."

Sec. 27. G.S. 58-62-92 is repealed.

Sec. 28. G.S. 58-62-95 reads as rewritten:

"§ 58-62-95. *Use of deposits made by impaired insurer.*

Notwithstanding any other provision of ~~Articles 1 through 64 of this Chapter~~ pertaining to the use of deposits made by insurance companies for the protection of policyholders, ~~the Commissioner shall deliver to the Association, and the Association is hereby authorized to shall receive, upon its request, from the Commissioner and may expend, any deposit or deposits previously or hereinafter made, whether or not made pursuant to statute, by an insurer determined to be impaired under this Article to the extent those deposits are needed by the Association to pay contractual obligations of that impaired insurer owed under covered policies as required by this Article, and to the extent those deposits are needed to pay all expenses of the Association relating to the impaired insurer: Provided that before delivering any deposit to the Association the Commissioner may retain and use an amount of the deposit up to five thousand dollars (\$5,000) ten thousand dollars (\$10,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-5-70. As used in this section, the term "administrative costs" does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-30-60(c), 58-30-75, or 58-30-120. The Association shall account to the Commissioner and the impaired insurer for all deposits received from the Commissioner hereunder, under this section. After all of the deposits of the impaired insurer received by the Association under this section have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article."~~

Sec. 29. G.S. 58-64-33(a) reads as rewritten:

"(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by cash, invested cash, ~~commercial paper,~~ or by investment grade securities,

including bonds, stocks, U.S. Treasury obligations, or obligations of U.S. government agencies."

**Sec. 30.** G.S. 58-69-40 reads as rewritten:

"§ 58-69-40. *Disposition of fees.*

~~In the event an application for license filed hereunder is not approved, the Commissioner shall retain ten dollars (\$10.00) of the fee paid in connection with the application and return the balance to the applicant. All fees collected by the Commissioner under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25."~~

**Sec. 31.** G.S. 58-70-65(a) reads as rewritten:

"(a) Each permit holder shall deposit, no later than two banking days ~~from~~ after receipt, in a separate trust account in any bank located in a North Carolina or ~~other~~ in any other bank approved by the Commissioner, sufficient funds to pay all moneys due or ~~owing~~ owed to all collection creditors or forwarders. ~~Said~~ The funds shall remain in the trust account until remitted to the creditor or forwarder, and shall not be commingled with any other operating funds. The trust account shall be used only for the purpose of:

- (1) Remitting to collection creditors or forwarders the proceeds to which they are entitled.
- (2) Remitting to the collection agency the commission that is due the collection agency.
- (3) Reimbursing consumers for overpayments.
- (4) Making adjustments to the trust account balance for bank service charges."

**Sec. 32.** G.S. 58-71-71 reads as rewritten:

"§ 58-71-71. *Examination; educational requirements; penalties.*

(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least 20 hours of education in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman.

(b) Each year every licensee shall complete at least 10 hours of continuing education in subjects related to the duties and responsibilities of a runner or bail bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals.

(c) Any person licensed as a runner or bail bondsman before January 1, 1994, is not subject to the prelicensing education requirement of this section, but is subject to the continuing education requirement of this section. A licensed runner or bail bondsman who is 65 years of age or older and who has been licensed as a runner or bail bondsman for 15 years or more is exempt from both the prelicensing education and continuing education requirements of this section.

(d) ~~The North Carolina Bail Agents Association shall provide education for bail bondsman licensure as required by this section.~~ The Commissioner shall approve the educational courses offered under this section and ensure



~~that the education meets the general standards for education otherwise established by the Commissioner, they enhance the professional competence and professional responsibility of bail bondsmen and runners. No person shall offer, sponsor, or conduct any course under the auspices of this section unless the Commissioner has authorized that person to do so.~~

(e) Any person who falsely represents to the Commissioner that the requirements of this section have been met is subject, after notice and opportunity for hearing, to G.S. 58-2-70.

(f) The Commissioner may adopt rules for the effective administration of this section."

Sec. 33. G.S. 58-85-1 reads as rewritten:

"§ 58-85-1. *Application of fund.*

The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the 'Firemen's Relief Fund' of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this Article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to grant educational scholarships to members and the children of members, to subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association, and to provide accidental death and dismemberment insurance for members of those fire departments not eligible for benefits pursuant to standards of certification adopted by the State Firemen's Association for the use of local relief funds."

Sec. 34. G.S. 143-143.14(b) reads as rewritten:

"(b) Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written ~~demand upon the Board~~ request for a review by a member of the Department staff designated by ~~the chairman~~ of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the ~~Board~~ applicant shall be notified promptly in writing as to the outcome of the



review. Within 30 days after service of the notification as to the outcome, the Board applicant may make a written ~~demand upon the Commissioner~~ request for a hearing under Article 3A of Chapter 150B of the General Statutes if the Board applicant disagrees with the outcome."

Sec. 35. G.S. 143-151.15 reads as rewritten:

"§ 143-151.15. *Return of certificate to Board; reissuance by Board.*

A certificate issued by the Board ~~pursuant to~~ under this Article shall ~~remain valid only so~~ is valid as long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official. When the person certified leaves ~~such that~~ employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board shall ~~may~~ reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. ~~The provisions of this section shall not affect the Board's power to suspend or revoke any certificate pursuant to~~ This section does not affect the Board's powers under G.S. 143-151.17."

Sec. 36. G.S. 143-151.17(d) reads as rewritten:

"(d) The Board may deny an application for a certificate for any of the grounds ~~for suspension, revocation, or refusal to grant~~ that are described in subsection (a) of this section. Within 30 days after receipt of a notification that an application for a certificate has been denied, the applicant may make a written ~~demand upon the Board~~ request for a review by a ~~member of the Department staff committee~~ designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the Board applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the Board applicant may make a written ~~demand upon the Commissioner~~ request for a hearing under Article 3A of Chapter 150B of the General Statutes if the Board applicant disagrees with the outcome."

Sec. 37. Sections 1, 2, and 25 of this act become effective January 1, 1995. Section 24 of this act becomes effective January 2, 1995. Sections 17, 23, 26, 27, and 28 of this act apply to delinquency proceedings pending on the effective date of this act. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 906

## CHAPTER 679

AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE WORKERS' COMPENSATION ACT AND TO MAKE RELATED CHANGES.

*The General Assembly of North Carolina enacts:*

### PART I. TITLE

**Section 1.** This act shall be known as "The Workers' Compensation Reform Act of 1994."

## **PART II. MEDICAL**

### **Subpart A -- Managed Care**

**Sec. 2.1.** Chapter 97 of the General Statutes is amended by adding the following new section:

"§ 97-25.2. *Managed care organizations.*

The requirements of G.S. 97-25 may be satisfied by contracting with a managed care organization. Notwithstanding any other provision of this Article, if an employer or carrier contracts with a managed care organization for medical services pursuant to this Article, those employees who are covered by the contract with the managed care organization shall receive medical services for a condition for which the employer has accepted liability or authorized treatment under this Article in the manner prescribed by the contract and in accordance with the managed care organization's certificate of authority; provided that the contract complies with rules adopted by the Commission, consistent with this Article, governing managed care organizations. An employee must exhaust all dispute resolution procedures of a managed care organization before applying to the Commission for review of any issue related to medical services compensable under this Article. Once application to the Commission has been made, the employee shall be entitled to an examination by a duly qualified physician or surgeon in the same manner as provided by G.S. 97-27.

If an employee's medical services are provided through a managed care organization pursuant to this section, subject to the rules of the managed care organization, the employee shall select the attending physician from those physicians who are members of the managed care organization's panel, and may subsequently change attending physicians once within the group of physicians who are members of the managed care organization's panel without approval from the employer or insurer. Additional changes in the attending physician or any change to a physician or examination by a physician not a member of the insurer's managed care organization's panel shall only be made pursuant to the organization's contract or upon reasonable grounds by order of the Commission."

### **Subpart B -- Preauthorization**

**Sec. 2.2.** Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-25.3. *Preauthorization.*

(a) An insurer may require preauthorization for inpatient admission to a hospital, inpatient admission to a treatment center, and inpatient or outpatient surgery. The insurer's preauthorization requirement must adhere to the following standards:

- (1) The insurer may require no more than 10 days advance notice of the inpatient admission or surgery.
- (2) The insurer must respond to a request for preauthorization within two business days of the request.

- (3) The insurer shall review the need for the inpatient admission or surgery and may require the employee to submit to an independent medical examination as provided in G.S. 97-27(a). This examination must be completed and the insurer must make its determination on the request for preauthorization within seven days of the date of the request unless this time is extended by the Commission for good cause.
- (4) The insurer shall document its review findings and determination in writing and shall provide a copy of the findings and determination to the employee and the employee's attending physician, and, if applicable, to the hospital or treatment center.
- (5) The insurer shall authorize the inpatient admission or surgery when it requires the employee to submit to a medical examination as provided in G.S. 97-27(a) and the examining physician concurs with the original recommendation for the inpatient admission or surgery. The insurer shall also authorize the inpatient admission or surgery when the employee obtains a second opinion from a physician approved by the insurer or the Commission, and the second physician concurs with the original recommendation for the inpatient admission or surgery. However, the insurer shall not be required by this subdivision to authorize the inpatient admission or surgery if it denies liability under this Article for the particular medical condition for which the services are sought.
- (6) Except as provided in subsection (c) of this section, the insurer may reduce its reimbursement of the provider's eligible charges under this Article by up to fifty percent (50%) if the insurer has notified the provider in writing of its preauthorization requirement and the provider failed to timely obtain preauthorization. The employee shall not be liable for the balance of the charges.
- (7) The insurer shall adhere to all other procedures for preauthorization prescribed by the Commission.

(b) An insurer may not impose a preauthorization requirement for the following:

- (1) Emergency services;
- (2) Services rendered in the diagnosis or treatment of an injury or illness for which the insurer has not admitted liability or authorized payment for treatment pursuant to this Article; and
- (3) Services rendered in the diagnosis and treatment of a specific medical condition for which the insurer has not admitted liability or authorized payment for treatment although the insurer admits the employee has suffered a compensable injury or illness.

(c) The Commission may, upon reasonable grounds, upon the request of the employee or provider, authorize treatment for which preauthorization is otherwise required by this section but was not obtained if the Commission determines that the treatment is or was reasonably required to effect a cure or give relief.

(d) The Commission may adopt procedures governing the use of preauthorization requirements and expeditious review of preauthorization denials.

(e) A managed care organization may impose preauthorization requirements consistent with the provisions of Chapter 58 of the General Statutes.

(f) A provider that refuses to treat an employee for other than an emergency medical condition because preauthorization has not been obtained shall be immune from liability in any civil action for the refusal to treat the employee because of lack of preauthorization."

### **Subpart C -- Medical Fees**

**Sec. 2.3.** G.S. 97-26 reads as rewritten:

"§ 97-26. ~~Liability.~~ Fees allowed for medical ~~treatment measured by average cost in community; treatment; malpractice of physician.~~

The pecuniary liability of the employer for medical, surgical, hospital service, nursing services, medicines, sick travel or other treatment required when ordered by the Commission, shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person, and the

(a) Fee Schedule. -- The Commission shall adopt a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make revisions pursuant to the provisions of this Article.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter, 'State Plan'), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ('CPT') codes, diagnostic-related groupings ('DRGs'), per diem rates, capitated payments, and resource-based relative-value system ('RBRVS') payments. The Commission may consider



statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.

(b) Hospital Fees. -- Payment for medical compensation rendered by a hospital participating in the State Plan shall be equal to the payment the hospital receives for the same treatment and services under the State Plan. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission. Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology.

(c) Maximum Reimbursement for Providers Under Subsection (a). -- Each health care provider subject to the provisions of subsection (a) of this section shall be reimbursed the amount specified under the fee schedule unless the provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology. In any instance in which neither the fee schedule nor a contractual fee applies, the maximum reimbursement to which a provider under subsection (a) is entitled under this Article is the usual, customary, and reasonable charge for the service or treatment rendered. In no event shall a provider under subsection (a) charge more than its usual fee for the service or treatment rendered.

(d) Information to Commission. -- Each health care provider seeking reimbursement for medical compensation under this Article shall provide the Commission information requested by the Commission for the development of fee schedules and the determination of appropriate reimbursement.

(e) When Charges Submitted. -- Health care providers shall submit charges to the insurer or managed care organization within 30 days of treatment, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Commission. If an insurer or managed care organization disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges in accordance with this Article or its contractual arrangement.

(f) Repeating Diagnostic Tests. -- A health care provider shall not authorize a diagnostic test previously conducted by another provider, unless the health care provider has reasonable grounds to believe a change in patient condition may have occurred or the quality of the prior test is doubted. The Commission may adopt rules establishing reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations.



A health care provider that violates this subsection shall not be reimbursed for the costs associated with administering or analyzing the test.

(g) Direct Reimbursement. -- The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

(h) Malpractice. -- The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such."

### **Subpart D -- Utilization Guidelines**

**Sec. 2.4.** Chapter 97 of the General Statutes is amended by adding the following new sections to read:

"§ 97-25.4. Utilization guidelines for medical treatment.

(a) The Commission may adopt utilization rules and guidelines, consistent with this Article, for medical care and medical rehabilitation services, other than those services provided by managed care organizations pursuant to G.S. 97-25.2, including, but not limited to, necessary palliative care, physical therapy treatment, psychological therapy, chiropractic services, medical rehabilitation services, and attendant care. The Commission's rules and guidelines shall ensure that injured employees are provided the services and care intended by this Article and that medical costs are adequately contained. In developing the rules and guidelines, the Commission may consider, among other factors, the practice guidelines adopted by the boards and associations representing medical and rehabilitation professionals.

(b) Palliative care rules or guidelines adopted by the Commission may require that the provider (i) supply to the employer a treatment plan, including a schedule of measurable objectives, a projected termination date for treatment, and an estimated cost of services, and (ii) obtain preauthorization from the employer, not inconsistent with the provisions of G.S. 97-25.3.

"§ 97-25.5. Utilization guidelines for vocational and other rehabilitation.

The Commission may adopt utilization rules and guidelines, consistent with this Article, for vocational rehabilitation services and other types of rehabilitation services. In developing the rules and guidelines, the Commission may consider, among other factors, the practice and treatment guidelines adopted by professional rehabilitation associations and organizations."

### **Subpart E -- Duration of Medical Compensation and Prosthesis Replacement**

**Sec. 2.5.** Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-25.1. Limitation of duration of medical compensation.

The right to medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation unless, prior

to the expiration of this period, either: (i) the employee files with the Commission an application for additional medical compensation which is thereafter approved by the Commission, or (ii) the Commission on its own motion orders additional medical compensation. If the Commission determines that there is a substantial risk of the necessity of future medical compensation, the Commission shall provide by order for payment of future necessary medical compensation."

Sec. 2.6. G.S. 97-2(19) reads as rewritten:

"(19) Medical Compensation. -- The term 'medical compensation' means medical, surgical, hospital, nursing, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period, period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances."

### PART III. COMPENSATION

#### Subpart A -- Payment of Compensation

Sec. 3.1. G.S. 97-18 reads as rewritten:

"§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer admits the employee's right to compensation, the first installment of compensation payable under the terms of an agreement by the employer shall become due on the fourteenth day after the employer has written or actual knowledge notice of the injury or death, on which date all compensation then due shall be paid. Thereafter Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer denies the employee's right to compensation, the employer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, and advise the employee in writing of its refusal to pay compensation on a form prescribed

by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due ~~14~~ 10 days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner. ~~A payment becomes due within the meaning of this subsection the day following expiration of time for appeal of an award or judgment or after notice waiving~~

~~right of appeal by all parties has been received by the Commission, whichever is sooner. Except that if the applicable time for appeal is longer than 14 days, then payment must be made within five days after it becomes due as herein defined.~~

~~(d) (f) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the Commission, in accordance with the form prescribed by the Commission, that payment of compensation has begun or has been suspended, as the case may be. The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.~~

~~(e) (g) If any installment of compensation payable in accordance with the terms of an agreement approved by the Commission is not paid within 14 days after it becomes due, as provided in subsection (b) of this section, or if any installment of compensation payable in accordance with the terms of an award by the Commission is not paid within 14 days after it becomes due, as provided in subsection (c) of this section, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.~~

~~(f) (h) Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars (\$25.00).~~

~~(g) (i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission."~~

Sec. 3.2. G.S. 97-82 reads as rewritten:

"§ 97-82. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for ~~approval~~ approval; direct payment as award.



~~(a) If after seven days after the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Industrial Commission, Commission, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.~~

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.

(b) If approved by the Commission, thereupon the a memorandum of agreement shall for all purposes be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior to expiration of the period for payment without prejudice, shall constitute an award of the Commission on the question of compensability of and the insurer's liability for the injury for which payment was made. Compensation paid in these circumstances shall constitute payment of compensation pursuant to an award under this Article."

Sec. 3.3. G.S. 97-83 reads as rewritten:

"§ 97-83. ~~In event of disagreement,~~ Commission is to make award after hearing.

If the employer and the injured employee or his dependents fail to reach an agreement, in regard to compensation under this Article within 14 days after the employee has knowledge of the injury or death, or if they have reached such an agreement which has been signed and filed with the Commission, and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, fail to reach an agreement in regard to benefits under this Article within 14 days after the employer has written or actual notice of the injury or death, or upon the arising of a dispute under this Article, either party may make application to the Industrial Commission for a hearing in regard to the matters at issue, and for a ruling thereon. The county commissioners of each of the counties shall provide a suitable place for the Industrial Commission to conduct hearings in the county seat of such county so long as the provision of such a suitable place does not interfere with the normal use of county facilities.

Immediately after such application has been received the Commission shall set the date of a hearing, which shall be held as soon as practicable, practicable and shall notify the parties at issue of the time and place of such hearing. The hearing or hearings shall be held in the city or county where



the injury occurred, unless otherwise authorized by the Industrial Commission."

**Sec. 3.4.** G.S. 97-24(a) reads as rewritten:

"(a) The right to compensation under this Article shall be forever barred unless (i) a claim or memorandum of agreement as provided in G.S. 97-82 is ~~be~~ filed with the Industrial Commission or the employee is paid compensation as provided under this Article within two years after the accident, accident or (ii) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission within two years after the last payment of medical compensation when no other compensation has been paid and when the employer's liability has not otherwise been established under this Article. The provisions of this subsection shall not limit the time otherwise allowed for the filing of a claim for compensation for occupational disease in G.S. 97-58, but in no event shall the time for filing a claim for compensation for occupational disease be less than the times provided herein for filing a claim for an injury by accident."

**Sec. 3.5.** Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-47.1. Payment without prejudice; limitations period.

When the employer has paid compensation without prejudice but timely contested liability as provided in G.S. 97-18(d), the right, if any, to further indemnity compensation and medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation, whichever last occurs, unless the employee files with the Commission a claim for further compensation prior to the expiration of this period."

#### **Subpart B -- Termination of Benefits**

**Sec. 3.6.** Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-18.1. Termination or suspension of compensation benefits.

(a) Payments of compensation pursuant to an award of the Commission shall continue until the terms of the award have been fully satisfied.

(b) An employer may terminate payment of compensation for total disability being paid pursuant to G.S. 97-29 when the employee has returned to work for the same or a different employer, subject to the provisions of G.S. 97-32.1. The employer shall promptly notify the Commission and the employee, on a form prescribed by the Commission, of the termination of compensation and the availability of trial return to work and additional compensation due the employee for any partial disability.

(c) An employer seeking to terminate or suspend compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in subsection (b) of this section shall notify the employee and the employee's attorney of record in writing of its intent to do so on a form prescribed by the Commission. A copy of the notice shall be filed with the Commission. This form shall contain the reasons for the proposed termination or suspension of compensation, be supported by available documentation, and inform the employee of the employee's right to contest the termination or suspension by filing an objection in writing with the Commission within 14

days of the date the employer's notice is filed with the Commission or within such additional reasonable time as the Commission may allow.

(d) If the employee fails to object to the employer's notice of proposed termination or suspension within the time provided, the Commission may enter an appropriate order terminating or suspending the compensation if it finds that there is a sufficient basis under this Article for this action. If the employee files a timely objection to the employer's notice, the Commission shall conduct an informal hearing by telephone with the parties or their counsel. If either party objects to conducting the hearing by telephone, the Commission may conduct the hearing in person in Raleigh or at another location selected by the Commission. The parties shall be afforded an opportunity to state their position and to submit documentary evidence at the informal hearing. The employer may waive the right to an informal hearing and proceed to the formal hearing. The informal hearing, whether by telephone or in person, shall be conducted only on the issue of termination or suspension of compensation and shall be conducted within 25 days of the receipt by the Commission of the employer's notice to the employee unless this time is extended by the Commission for good cause. The Commission shall issue a decision on the employer's application for termination of compensation within five days after completion of the informal hearing. The decision shall (i) approve the application, (ii) disapprove the application, or (iii) state that the Commission is unable to reach a decision on the application in an informal hearing, in which event the Commission shall schedule a formal hearing pursuant to G.S. 97-83 on the employer's application for termination of compensation. Compensation may be terminated or suspended by the employer following an informal hearing only if its application is approved. If the Commission was unable to reach a decision in the informal hearing, the employee's compensation shall continue pending a decision by the Commission in the formal hearing. The Commission's decision in the informal hearing is not binding in subsequent hearings.

The employer or the employee may request a formal hearing pursuant to G.S. 97-83 on the Commission's decision approving or denying the employer's application for termination of compensation. A formal hearing under G.S. 97-83 ordered or requested pursuant to this section shall be a hearing *de novo* on the employer's application for termination or suspension of compensation and may be scheduled by the Commission on a preemptive basis.

(e) At an informal hearing on the issue of termination or suspension of compensation, and at any subsequent hearing, the Commission may address related issues regarding the selection of medical providers or treatment under G.S. 97-25, subject to exhaustion of the dispute resolution procedures of a managed care organization pursuant to G.S. 97-25.2."

### **Subpart C -- Credit for Payments**

**Sec. 3.7.** G.S. 97-42 reads as rewritten:

"§ 97-42. *Deduction of payments.*

~~Any payments~~ Payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms

of this Article were not due and payable when made, may, subject to the approval of the ~~Industrial~~ Commission be deducted from the amount to be paid as compensation. Provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payment. Unless otherwise provided by the plan, when payments are made to an injured employee pursuant to an employer-funded salary continuation, disability or other income replacement plan, the deduction shall be calculated from payments made by the employer in each week during which compensation was due and payable, without any carry-forward or carry-back of credit for amounts paid in excess of the compensation rate in any given week."

#### PART IV. TRIAL RETURN TO WORK

**Sec. 4.1.** Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-32.1. Trial return to work.

Notwithstanding the provisions of G.S. 97-32, an employee may attempt a trial return to work for a period not to exceed nine months. During a trial return to work period, the employee shall be paid any compensation which may be owed for partial disability pursuant to G.S. 97-30. If the trial return to work is unsuccessful, the employee's right to continuing compensation under G.S. 97-29 shall be unimpaired unless terminated or suspended thereafter pursuant to the provisions of this Article."

#### PART V. ADMINISTRATIVE

**Sec. 5.1.** Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-77.1. Advisory council.

The chairman of the Commission may appoint an advisory council to advise the chairman on workers' compensation issues and other matters within the jurisdiction of the Commission. The members of the council shall serve at the pleasure of the chairman. The members of the council shall not receive compensation for their service on the council."

**Sec. 5.2.** G.S. 97-79 reads as rewritten:

"§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.

(a) The Commission shall be provided with adequate offices in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

(b) The Commission may appoint deputies who shall have the same power to issue subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations in contempt as provided in Chapter 5A of the General Statutes, as members of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter orders, opinions, and awards based thereon as is possessed by the members of the ~~Commission, Commission, and such deputy or deputies~~ The deputies shall be subject to the State Personnel System.

(c) The Commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the Commission.

(d) Hearings before the Commission shall be open to the public and shall be stenographically reported, and the Commission is authorized to contract for the reporting of such hearings. The Commission shall by regulation provide for the preparation of a record of the hearings and other proceedings. Notwithstanding the provisions of this subsection, informal hearings conducted pursuant to the provisions of G.S. 97-18.1, whether by telephone or in person, shall not be open to the public nor stenographically reported unless the Commission orders otherwise.

(e) ~~The North Carolina Industrial Commission~~, or any member thereof, or any deputy is authorized by appropriate order, to make additional parties plaintiff or defendant in any proceeding pending before the ~~North Carolina Industrial Commission~~ when it is made to appear that such new party is either a necessary party or a proper party to a final determination of the proceeding.

(f) The Commission shall create an ombudsman program to assist unrepresented claimants, employers, and other parties, to enable them to protect their rights under this Article. In addition to other duties assigned by the Commission, the ombudsman shall meet with, or otherwise provide information to, injured employees, investigate complaints, and communicate with employers' insurance carriers and physicians at the request of the claimant. Assistance provided under this subsection shall not include representing the claimant in a compensation hearing."

Sec. 5.3. G.S. 97-80 reads as rewritten:

"§ 97-80. *Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.*

(a) The Commission may make rules, not inconsistent with this Article, for carrying out the provisions of this Article. ~~Processes and procedure~~ Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, ~~and to subpoena witnesses, to administer or cause to have administered oaths, hold persons, firms or corporations in contempt as provided in Chapter 5A of the General Statutes, and to examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute, to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.~~

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.

(d) The Commission may order testimony to be taken by deposition and any party to a proceeding under this Article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or



without the State to be taken, the costs to be taxed as other costs by Commission. ~~Such depositions~~ Depositions ordered by the Commission upon application of a party shall be taken after giving the notice and in the manner prescribed by law for depositions in action at law, except that they shall be directed to the Commission, the commissioner, or the deputy commissioner before whom the proceedings may be pending.

~~(b) (c) All subpoenas of the Commission or its deputies shall be served in the manner and for the same fees as are now provided by law for like services; each~~ A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, of for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

(g) The Commission or any member or deputy thereof shall have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil contempt, as provided thereunder, for failure to comply with an order of the Commission, Commission member, or deputy. A person held in civil contempt may appeal in the manner provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall not apply to appeals pursuant to this subsection.

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for wilful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for wilful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for wilful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, wilful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing *de novo* before a superior court judge.



~~(c) The superior court shall, on application of the Commission or any member or deputy thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records."~~

**Sec. 5.4.** Subsection (c) of G.S. 97-80 shall expire June 30, 1995, in accordance with the provisions of Chapter 399 of the 1993 Session Laws, unless the General Assembly amends Chapter 399 of the 1993 Session Laws to provide otherwise.

**Sec. 5.5.** G.S. 90-411 reads as rewritten:

*"§ 90-411. Record copy fee.*

A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient's designated representative. The maximum fee shall be fifty cents (50¢) per page, provided that the health care provider may impose a minimum fee of up to ten dollars (\$10.00), inclusive of copying costs. If requested by the patient or the patient's designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. This section shall only apply with respect to liability claims for personal ~~injury~~, injury, except that charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. 97-26.4."

**Sec. 5.6.** Chapter 97 of the General Statutes is amended by adding the following section:

*"§ 97-26.1. Fees for medical records and reports; expert witnesses.*

The Commission may establish maximum fees for the following when related to a claim under this Article: (i) the searching, handling, copying, and mailing of medical records, (ii) the preparation of medical reports and narratives, and (iii) the presentation of expert testimony in a Commission proceeding."

**Sec. 5.7.** Chapter 97 of the General Statutes is amended by adding a new section to read:

*"§ 97-83.1. Facilities for hearings; security.*

The senior resident superior court judge shall provide suitable facilities for the conduct of hearings under this Article in the county or counties within the judge's district at the time the Commission schedules hearings therein. The senior resident superior court judge shall, to the extent the judge determines necessary and practicable, provide or arrange for security at Commission hearings upon the request of a member or deputy of the Commission."

## PART VI. SECOND INJURY FUND

**Sec. 6.1.** G.S. 97-40.1(a) reads as rewritten:

"(a) There is hereby created a fund to be known as the 'Second Injury Fund,' to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the

payment of not to exceed ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250.00) for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and shall assess not to exceed ~~five hundred dollars (\$500.00)~~ seven hundred fifty dollars (\$750.00) for fifty percent (50%) or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

~~In addition to the assessments hereinabove provided for, the Commission shall also deposit in said fund all moneys received by it for the Second Injury Fund under the provisions of G.S. 97-40."~~

## PART VII. PENALTIES FOR FRAUD AND MISREPRESENTATION

Sec. 7.1. Chapter 97 of the General Statutes is amended by adding the following new section to read:

"§ 97-88.2. Penalty for misrepresentation.

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1 misdemeanor. The court may order restitution.

(b) The Commission shall refer all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, to the Department of Insurance to:

(1) Perform investigations and refer possible criminal violations to the appropriate prosecutorial authorities;

(2) Conduct administrative violation proceedings; and

(3) Assess and collect penalties and restitution.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation under this Article shall be guilty of a Class 1 misdemeanor.

(d) The Commission shall not be liable in a civil action for any action made in good faith under this section, including the identification and referral of a person for investigation and prosecution for an alleged administrative violation or criminal offense. Any person, including, but not limited to, an attorney, an employee, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers."

Sec. 7.2. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-88.3. Penalty for health care providers.

(a) In addition to any liability under G.S. 97-88.2, any health care provider who willfully or intentionally undertakes the following acts is subject to an administrative penalty, assessed by the Commission, not to exceed ten thousand dollars (\$10,000):

- (1) Submitting charges for health care that was not furnished;
- (2) Fraudulently administering, providing, and attempting to collect for inappropriate or unnecessary treatment or services; or
- (3) Violating the provisions of Article 28 of Chapter 90 of the General Statutes.

A penalty assessed by the Commission for a violation of subdivision (3) of this subsection is in addition to penalties assessed under G.S. 90-407.

(b) In addition to any liability under G.S. 97-88.2, any health care provider who willfully or intentionally undertakes the following acts is subject to an administrative penalty, assessed by the Commission, not to exceed one thousand dollars (\$1,000):

- (1) Failing or refusing to timely file required reports or records;
- (2) Making unnecessary referrals; and
- (3) Knowingly violating this Article or rules promulgated hereunder, including treatment guidelines, with intention to deceive or to gain improper advantage of a patient, employee, insurer, or the Commission.

(c) A health care provider who knowingly charges or otherwise holds an employee financially responsible for the cost of any services provided for a compensable injury under this Article is guilty of a Class 1 misdemeanor.

(d) Any person, including, but not limited to, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) Information relating to possible violations under this section shall be reported to the Commission which shall refer the same to the appropriate licensing or regulatory board or authority for the health care provider involved.

(f) A hospital that relies in good faith on a written order of a physician in performing health care services shall not be subject to an administrative penalty in violation of this section."

## PART VIII. WORKERS' COMPENSATION INSURANCE

### Subpart A -- Failure to Insure

Sec. 8.1. G.S. 97-94 reads as rewritten:

"§ 97-94. Employers required to give proof within 30 days that they have complied with preceding section; fine penalty for not keeping liability insured; review; liability for compensation; failure to secure payment of compensation a misdemeanor.

(a) Every employer subject to the compensation provisions of this Article shall, within 30 days, after this Article takes effect, shall file with the Industrial Commission, in form prescribed by it, and thereafter, annually or as often as may the Commission determines to be necessary, evidence of his compliance with the provisions of G.S. 97-93 and all other provisions relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a fine penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100)

for each day of such refusal or neglect, and until the same ceases; and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The ~~fine~~ penalty herein provided may be assessed by the Industrial Commission administratively, in an open hearing, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the ~~fine~~ penalty shall be made by the Office of the Attorney General.

(c) Any employer required to secure the payment of compensation under this Article who willfully refuses or neglects to secure such compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, wilfully and intentionally refuses or neglects to bring the employer in compliance, shall be guilty of a Class 1 misdemeanor and may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93. Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of the civil penalty on condition that the employer pays the compensation due and complies with G.S. 97-93."

Sec. 8.2. G.S. 97-93 reads as rewritten:

*"§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.*

(a) Every employer subject to the provisions of this Article relative to the payment of compensation shall either:

- (1) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized; or
- (2) Furnish to the Commissioner of Insurance satisfactory proof of the employer's financial ability, either alone or through membership in a group comprising two or more employers who agree to pool their liabilities under this Article, to directly pay the compensation in the amount and manner and when due as provided for in this Article.

(b) In the case of subdivision (a)(2) of this section, the Commissioner of Insurance may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred. Any individual employer or group of employers who furnish proof of financial ability under subdivision (a)(2) of this section shall be governed in all respects by this Article and by such rules as may be promulgated by the Commissioner of Insurance.

(c) Payment of dividends to the members of any group of employers who agree to pool their liabilities under subdivision (a)(2) of this section shall not be contingent upon the maintenance or continuance of membership in such pools.



(d) Every employer who is in compliance with the provisions of subsection (a) of this section shall post in a conspicuous place in places of employment a notice stating that employment by this employer is subject to the North Carolina Workers' Compensation Act and stating whether the employer has a policy of insurance against liability or qualifies as a self-insured employer. In the event the employer allows its insurance to lapse or ceases to qualify as a self-insured employer, the employer shall, within five working days of this occurrence, remove any notices indicating otherwise."

Sec. 8.3. G.S. 105-163.7 is amended by adding a new subsection to read:

"(c) An employer who is required to file an annual report under subsection (b) of this section must report to the Secretary the following information concerning compliance with Article 1 of Chapter 97 of the General Statutes, the Workers' Compensation Act:

- (1) Whether the employer is required to maintain insurance or qualify as a self-insured employer under the provisions of G.S. 97-93.
- (2) Whether the employer is insured, self-insured through a group, or individually self-insured.
- (3) The name of the employer's workers' compensation insurance carrier and the number and expiration date of the insurance policy if the employer has workers' compensation insurance.
- (4) The name of the self-insured group, the group's third-party administrator, and the group's or employer's self-insured code number used by the Department of Insurance, if the employer is a member of a self-insured group.
- (5) The name of the employer's third-party administrator and the employer's self-insured code number used by the Department of Insurance, if the employer is individually self-insured.
- (6) Whether any information reported to the Secretary on a previous return has changed.

The Secretary must compile the information concerning workers' compensation reported by employers on an annual report and must give the compiled data to the Industrial Commission."

Sec. 8.4. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (1) To comply with a court order or a law.
- (2) Review by the Attorney General or a representative of the Attorney General.
- (3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.



- (4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.
- (5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.
- (6) To sort, process, or deliver tax information on behalf of the Department of Revenue.
- (7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.
- (8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.
- (9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.
- (10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.
- (11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.
- (12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.
- (13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.
- (14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.
- (15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:
  - a. The North Carolina Alcoholic Beverage Control Commission.
  - b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
  - c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
- (16) To furnish to the Department of Secretary of State the name, address, and account and identification numbers of a corporation liable for corporate income or franchise taxes to enable the

Secretary of State to notify the corporation of the annual report filing requirement or that its articles of incorporation or its certificate of authority has been suspended.

- (17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.
- (18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.
- (19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7."

#### Subpart B -- Assigned Risk

Sec. 8.5. G.S. 58-36-1(5) reads as rewritten:

- "(5) a. It is the duty of every insurer that writes workers' compensation insurance in this State and is a member of the Bureau, as defined in this section and G.S. 58-36-5 to insure and accept any workers' compensation insurance risk that has been certified to be 'difficult to place' by any fire and casualty insurance agent who is licensed in this State. When any such risk is called to the attention of the Bureau by receipt of an application with an estimated or deposit premium payment and it appears that the risk is in good faith entitled to such coverage, the Bureau will bind coverage for 30 days and will designate a member who must issue a standard workers' compensation policy of insurance that contains the usual and customary provisions found in those policies. Coverage will be bound at 12:01 A.M. on the first day following the postmark time and date on the envelope in which the application is mailed including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 A.M. on the date of receipt by the Bureau unless a later date is requested. Those applications hand delivered to the Bureau will be effective as of 12:01 A.M. of the date following receipt by the Bureau unless a later date is requested. The designated carrier may request of the Bureau certification of the State Department of Labor that the insured is complying with the laws, rules, and regulations of that Department. The certification must be finished within 30 days by the State Department of Labor unless extension of time is granted by agreement between the Bureau and the State Department of Labor. The Bureau will make and adopt such rules as are necessary to carry this section into effect, subject to final approval of the Commissioner. As a prerequisite to the transaction of workers' compensation

insurance in this State, every member of the Bureau that writes such insurance must file with the Bureau written authority permitting the Bureau to act in its behalf, as provided in this section, and an agreement to accept risks that are assigned to the member by the Bureau, as provided in this section.

- b. Upon notice of cancellation or the decision to decline to write or renew a policy of workers' compensation insurance for an employer, the carrier or its agents shall supply the employer with a form, supplied by the Bureau, by which the employer may request the Bureau to list the employer and pertinent information about it among a compendium of such information on employers refused voluntary coverage, which shall be made available by the Bureau to all insurers and self-insureds' administrators doing business in this State. It shall be stored and indexed to allow access to information by industry, primary classifications of employees, geography, experience modification, and in any other manner the Bureau determines is commercially useful to facilitate voluntary coverage of listed employers.
- c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully any records pertaining to workers' compensation insurance shall be sufficient grounds for the Bureau to authorize the termination of the policy of that employer."

**Sec. 8.6.** The North Carolina Rate Bureau and its member companies are directed to cooperate fully with the Commissioner of Insurance in conducting a thorough and complete study of the methods and costs of assigning "difficult to place" workers' compensation insurance risks under G.S. 58-36-1(5). Such study shall be completed and the Commissioner shall report on the same to the Joint Legislative Commission on Governmental Operations by February 1, 1995, for consideration of any needed legislation in the 1995 General Assembly. The report of the Commissioner, and the study preceding the same, shall examine such things as, but not be limited to, the criteria used for assigning a workers' compensation risk, the qualifications of and the compensation paid to insurers which service risks assigned under that statute, safety and loss prevention services provided to risks so assigned, the acquisition expenses paid by the Rate Bureau and its member insurers to insurance agents placing risks through such assignments, and the equities of both member insurers and self-funded employers sharing in any possible losses sustained by that assigned risk plan. The study and report of the Commissioner may, in his discretion, also address the procedures and methodology for insurance rate making for workers' compensation and employers' liability insurance under Article 36 of Chapter 58 of the General Statutes.

**PART IX. ATTORNEYS' FEES**

**Sec. 9.1.** G.S. 97-90 reads as rewritten:

"§ 97-90. *Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.*

(a) Fees for attorneys and ~~physicians and charges of hospitals~~ health care providers for medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the ~~Industrial~~ Commission in connection with the case. ~~Unless otherwise provided by the rules, schedules, or orders of the Commission,~~ Except as provided in G.S. 97-26(g), a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge.

(b) Any person (i) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or ~~such court,~~ the court, as provided in subsection (c), or (ii) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment not to exceed one year, or by both such fine and imprisonment.

(c) If an attorney has an agreement for fee or compensation under this Article, he shall file a copy or memorandum thereof with the hearing officer or Commission prior to the conclusion of the hearing. If the agreement is not considered unreasonable, the hearing officer or Commission shall approve it at the time of rendering decision. If the agreement is found to be unreasonable by the hearing officer or Commission, the reasons therefor shall be given and what is considered to be reasonable fee allowed. If within five days after receipt of notice of such fee allowance, the attorney shall file notice of appeal to the full Commission, the full Commission shall hear the matter and determine whether or not the attorney's agreement as to a fee or the fee allowed is unreasonable. If the full Commission is of the opinion that such agreement or fee allowance is unreasonable and so finds, then the attorney may, by filing written notice of appeal within 10 days after receipt of such action by the full Commission, appeal to the senior resident judge of the superior court ~~or the judge holding the courts of the district of~~ ~~or~~ in the county in which the cause of action arose or in which the claimant resides; and upon such appeal said judge shall consider the matter and determine in his discretion the reasonableness of said agreement or fix the fee and direct an order to the Commission following his determination therein. The Commission shall, within 20 days after receipt of notice of appeal from its action concerning said agreement or allowance, transmit its findings and reasons as to its action concerning such agreement or allowance to the judge of the superior court designated in the notice of appeal. In all other cases where there is no agreement for fee or compensation, the attorney or claimant may, by filing written notice of appeal within five days after receipt of notice of action of the full



Commission with respect to attorneys' fees, appeal to the senior resident judge of the superior court ~~or the judge holding the courts~~ of the district of the county in which the cause arose or in which the claimant resides; and upon such appeal said judge shall consider the matter of such fee and determine in his discretion the attorneys' fees to be allowed in the cause. The Commission shall, within 20 days after notice of appeal has been filed, transmit its findings and reasons as to its action concerning such fee or compensation to the judge of the superior court designated in the notice of appeal; provided that the Commission shall in no event have any jurisdiction over any attorneys' fees in any third-party action. In any case in which an attorney appeals to the superior court on the question of attorneys' fees, the appealing attorney shall notify the Commission and the employee of any and all proceedings before the superior court on the appeal, and either or both may appear and be represented at such proceedings.

The Commission, in determining an allowance of attorneys' fees, shall examine the record to determine the services rendered. The factors which may be considered by the Commission in allowing a reasonable fee include, but are not limited to, the time invested, the amount involved, the results achieved, whether the fee is fixed or contingent, the customary fee for similar services, the experience and skill level of the attorney, and the nature of the attorney's services.

In making the allowance of attorneys' fees, the Commission shall, upon its own motion or that of an interested party, set forth findings sufficient to support the amount approved.

The Commission may deny or reduce an attorney's fees upon proof of solicitation of employment in violation of the Rules of Professional Conduct of the North Carolina State Bar.

(d) Provided, that nothing contained in this section shall prevent the collection of such reasonable fees of physicians and charges for hospitalization as may be recovered in an action, or embraced in settlement of a claim, against a third-party tort-feasor as described in G.S. 97-10, G.S. 97-10.2.

~~(e) The fees provided for in subsection (a) of this section shall be approved by the Commission no later than June 1 of the year in which the Commission exercises its authority under subsection (a) of this section, but shall not become effective until July 1 following such approval.~~

(e) A health care provider shall not pursue a private claim against an employee for all or part of the costs of medical treatment provided to the employee by the provider unless the employee's claim or the treatment is finally adjudicated not to be compensable or the employee fails to request a hearing after denial of liability by the employer. Notwithstanding subsequent denial of liability or adjudication that the condition treated was not compensable, the insurer shall be liable as provided in G.S. 97-26 to providers whose services have been authorized by the insurer or employer. The statute of limitations applicable to a provider's claim for payment shall be tolled during the period the compensability of a claim or liability for particular treatment remains an issue in a compensation case."

## PART X. MISCELLANEOUS



Sec. 10.1. G.S. 97-31.1 does not apply to this act.

Sec. 10.2. G.S. 97-81(a) reads as rewritten:

"(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this Article. The Commission may authorize the use of electronic submission of forms and other means of transmittal of forms and notices when it deems appropriate."

Sec. 10.3. G.S. 135-39.5 is amended by adding a new subdivision to read:

"(22) Providing to the Industrial Commission the schedule of allowable charges under the Plan for each participating hospital and other information deemed necessary by the Commission to fulfill its duties under G.S. 97-26."

Sec. 10.4. G.S. 58-50-65(a) reads as rewritten:

"(a) Nothing in Articles 50 through 55 of this Chapter shall apply to or affect any policy of liability or workers' compensation ~~insurance~~, insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 shall apply to policies of workers' compensation insurance."

Sec. 10.5. G.S. 97-86 reads as rewritten:

"§ 97-86. *Award conclusive as to facts; appeal; certified questions of law.*

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within 30 days from the date of such award or within 30 days after receipt of notice to be sent by registered mail or certified mail of such award, but not thereafter, appeal from the decision of said Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by said Court. In case of an appeal from the decision of the Commission, or of a certification by said Commission of questions of law, to the Court of Appeals, said appeal or certification shall operate on a *supersedeas* except as provided in G.S. 97-86.1, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal of such employer shall not act as a *supersedeas* and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court.

When any party to an appeal from an award of the Commission is unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, the chairman of the Industrial Commission may, in his any member of the Commission or any deputy commissioner may, in

their discretion, enter an order allowing said party to appeal from the award of the Commission without giving security therefor. The party ~~desiring to appeal~~ appealing from the judgment shall, within 30 days from the filing of the appeal from the award by the full Commission, ~~award~~, make an affidavit that he is unable by reason of his poverty to give the security required by law, and that he is advised by a practicing attorney that there is error in the matters of law in the award of the Commission in said case. The affidavit must be accompanied by a written statement from a practicing attorney of North Carolina that he has examined the affiant's case and is of the opinion that the decision of the Commission in said case is contrary to law. The request for ~~appeal~~ shall be passed upon and granted or denied by ~~the chairman of the Commission~~ a member of the Commission or deputy commissioner within 30 20 days from receipt of the affidavit and letter as specified above."

Sec. 10.6. G.S. 97-19 reads as rewritten:

"§ 97-19. *Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service ~~less than four~~ fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

**Sec. 10.7.** G.S. 97-2 is amended by adding the following new subdivisions to read:

"(20) Health care provider. -- The term 'health care provider' means physician, hospital, pharmacy, chiropractor, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist, and any other person providing medical care pursuant to this Article.

(21) Managed care organization. -- The term 'managed care organization' means a preferred provider organization or a health maintenance organization regulated under Chapter 58 of the General Statutes."

**Sec. 10.8.** G.S. 97-92(a) reads as rewritten:

"(a) Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on blanks approved by the Commission. Within five days after the occurrence and knowledge thereof as provided in G.S. 97-22 of an injury to an employee, causing his absence from work for more than one day, day or charges for medical compensation exceeding the amount set by the Commission, a report thereof shall be made in writing and mailed or transmitted to the Industrial Commission on blanks to be procured from in the form approved by the Commission for this purpose."

**Sec. 10.9.** G.S. 97-18.1(b), as enacted in Section 3.6 of this act, reads as rewritten:

"(b) An employer may terminate payment of compensation for total disability being paid pursuant to G.S. 97-29 when the employee has returned to work for the same or a different employer, subject to the provisions of ~~G.S. 97-32.1~~ G.S. 97-32.1, or when the employer contests a claim pursuant to G.S. 97-18(d) within the time allowed thereunder. The employer shall promptly notify the Commission and the employee, on a form prescribed by the Commission, of the termination of compensation and the availability of trial return to work and additional compensation due the employee for any partial disability."

**Sec. 10.10.** The Part headings and Subpart headings are for reference only and in no way limit, prescribe, or define the scope or application of the text of this act.

## PART XI. EFFECTIVE DATE

**Sec. 11.1.** This act is effective upon ratification, except as follows:

(a) Sections 3.6, 4.1, and G.S. 97-79(d), as contained in Section 5.2, become effective October 1, 1994, and apply to claims pending on or filed after that date.

(b) G.S. 97-26(b) and G.S. 97-26(f), as enacted in Section 2.3, become effective October 1, 1994. G.S. 97-26(a), as enacted in Section 2.3, is effective upon ratification but the provisions of the third paragraph of said subsection shall not apply to the fee schedule in effect as of the date of ratification of this act.

(c) Sections 7.1, 7.2, and 8.1 become effective October 1, 1994, and apply to violations occurring on or after that date.

(d) Sections 2.1, 2.2, 2.4, 3.7, and 5.5 become effective September 1, 1994, and apply to claims pending on or filed after that date.

(e) Section 6.1 and G.S. 97-79(f), as contained in Section 5.2, become effective July 1, 1994.

(f) Sections 3.2, 3.3, 3.4, 3.5, subsections (b), (c), (d), (f), and (g), and the catch line of G.S. 97-18, as contained in Section 3.1, and Section 10.9 become effective January 1, 1995, and apply to claims pending on or filed after that date.

(g) Section 2.5 is effective upon ratification and applies to injuries by accident occurring on or after that date.

(h) Section 2.6 is effective upon ratification and applies to claims pending on or filed after the date of ratification.

(i) Section 8.5 becomes effective September 1, 1994.

Section 5.1 expires July 1, 1997.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1889

## CHAPTER 680

AN ACT TO RESTORE UNEMPLOYMENT BENEFITS TO THEIR PRE-1983 LEVEL, TO MAKE PARTICIPATION IN REEMPLOYMENT SERVICES A CONDITION OF RECEIVING CERTAIN BENEFITS, AND TO MAKE TECHNICAL CHANGES TO THE EMPLOYMENT SECURITY LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 96-12(b) reads as rewritten:

"(b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

b. ~~Each eligible An individual whose benefit year begins on or after the first day of October, 1974, who is totally unemployed as defined by G.S. 96-8(10)a, and who files a valid claim, shall be paid benefits with respect to such week or weeks at a rate per week equal to the individual's weekly benefit amount. The weekly benefit amount for an individual is the amount obtained by dividing such individual's of the high-quarter wages paid during his to the individual in the individual's base period by 26, rounded to the nearest dollar, but shall not be less than fifteen dollars (\$15.00).~~

~~Each eligible individual whose benefit year begins on or after the first day of October 1983, who is totally unemployed as defined by G.S. 96-8(10), and who files a valid claim, shall be paid benefits with respect to such week or weeks at a rate equal to the amount obtained by dividing the sum of the wages paid to such individual during his two highest paid base period quarters by 52 and, if the amount so obtained is not a multiple of one dollar, rounded to the next lower whole dollar; provided that if the amount so obtained, after rounding, period, divided by 26 and, if the quotient is not a whole dollar, rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), no benefits shall be paid, the individual is not eligible for benefits.~~

c. Repealed by Session Laws 1981, c. 160, s. 17.

- (2) ~~Each August 1, a the Commission shall calculate the maximum weekly benefit amount available to an eligible individual whose benefit year begins on October 1, 1974, or thereafter, shall be determined by multiplying the average weekly insured wage, obtained in accordance with G.S. 96-8(22), by two thirds rounded, if not a multiple of one dollar, to the next lower dollar. Effective August 1, 1987, the maximum weekly benefit amount shall be computed as sixty-three percent (63%) of the average weekly insured wage. Thereafter, beginning August 1, 1988, the individual. The maximum weekly benefit amount shall be computed as is sixty-six and two-thirds percent (66 2/3%) of the average weekly insured wage, wage rounded, if the amount is not a whole dollar, to the next lower whole dollar. The maximum rate applicable to each claimant shall be that rate in effect during the time the claimant's benefit year is established, weekly benefit amount set on August 1 of a year applies to an individual whose benefit year begins on or after that date and before August 1 of the following year.~~

(3) Repealed by Session Laws 1981, c. 160, s. 18.

- (4) ~~Qualifying Wages for Second Benefit Year. -- Any An individual whose prior benefit year has expired and who files a new benefit claim for benefits on and after January 1, 1972, shall is not be entitled to benefits unless he the individual has been paid qualifying wages required by G.S. 96-12(b)(1), and since the beginning date of his last established previous the prior benefit year and before the date upon which he files his the new benefit claim has been paid wages was filed equal to at least 10 times the individual's weekly benefit amount of under the new benefit year claim. Such wages must have been 'Qualifying wages' are wages earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in Chapter 85, Title 5, United States Code. 5 U.S.C. Chapter 85."~~

Sec. 2. G.S. 96-12(c) reads as rewritten:



"(c) Partial Weekly Benefit. -- ~~Each eligible An individual whose benefit year begins after December 31, 1977, who is 'partially unemployed' or 'part totally unemployed' as defined in G.S. 96-8(10)b and c respectively, and who files a valid claim, partially unemployed or part-totally employed shall be paid benefits with respect to such week or weeks in an amount figured to the nearest multiple of one dollar (\$1.00) which is equal to the difference between his weekly benefit amount and that part of the remuneration payable to him for such week which is in excess of ten percent (10%) of the average weekly wage in the high quarter of his base period. Each eligible individual whose benefit year begins on or after October 1, 1983, who is 'partially unemployed' or 'part totally unemployed' as defined in G.S. 96-8(10), and who files a valid claim, shall be paid benefits with respect to such week or weeks in an amount rounded to the nearest lower full dollar amount (if not a full dollar amount) which is equal to a portion of the individual's weekly benefit amount. The portion payable is the difference between his the individual's weekly benefit amount and that any part of the wages or remuneration that is payable to him for such week which is in excess of the individual for a week for which benefits are claimed and that exceeds ten percent (10%) of the individual's average weekly wage in the two highest quarters highest quarter of his the individual's base period. The computation of the partial weekly benefit shall be made without regard to any benefits received by the claimant period rounded, if the amount is not a whole dollar, to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan referred to in G.S. 96-8(13)(d). 96-8(13)d. do not affect the computation of the individual's partial weekly benefit."~~

Sec. 3. G.S. 96-12(d) reads as rewritten:

"(d) Duration of Benefits. -- ~~On and after October 1, 1974, the maximum The total benefits paid to an individual shall not be less than the minimum total benefit and shall not exceed the lesser of the maximum total benefit or the individual's total benefit amount. The total benefit amount available to eligible individuals shall be for an individual is determined by dividing the individual's base-period wages by his the individual's high-quarter wages and wages, multiplying that quotient by eight and two thirds, rounding the result to the nearest whole number, and then multiplying the figure so derived resulting amount by the individual's weekly benefit amount available to that individual; provided the amount. The minimum total amount of benefits available to eligible individuals shall not be less than benefit for an individual is 13 times his the individual's weekly benefit amount, nor shall any eligible individual be entitled to more than amount. The maximum total benefit for an individual is 26 times his the individual's weekly benefit amount during any benefit year, except that such amount, unless the benefits may be are extended further in accordance with the provisions of G.S. 96-12(e). On and after October 1, 1983, the maximum benefit amount available to eligible individuals shall be determined by dividing the individual's base-period wages by his high-quarter wages and multiplying that quotient by eight, rounding the result to the nearest whole number, and then multiplying the figure so derived by the weekly benefit amount available to that individual; provided the minimum total amount of~~

~~benefits available to eligible individuals shall not be less than 13 times his weekly benefit amount, nor shall any eligible individual be entitled to more than 26 times his weekly benefit amount during any benefit year, except that such benefits may be extended further in accordance with the provisions of G.S. 96-12(e), subsection (e) of this section. The Commission shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment, until such time as such employment for as long as the wages would not be necessary for benefit purposes, included in a determination of benefits."~~

Sec. 4. G.S. 96-8 is amended by adding the following new subdivision to read:

"(8a) 'Reemployment services' means job search assistance and job placement services, such as counselling, testing, assessment, and providing occupational and labor market information, job search workshops, job clubs, referrals to employers, and other similar services."

Sec. 5. G.S. 96-13(a) is amended by adding the following new subdivision to read:

"(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services."

Sec. 6. G.S. 96-21 reads as rewritten:

"§ 96-21. ~~Cooperation with State and federal agencies.~~ Duties concerning veterans and worker profiling.

The duties of the Employment Service Division shall include the following:

- (1) To cooperate with all State and federal agencies in attempting to secure suitable employment and fair treatment for military veterans and disabled veterans.
- (2) To establish and use a worker profiling system that complies with 42 U.S.C. § 503(a)(10) to identify claimants for benefits whom the Division must refer to reemployment services in accordance with that law."

Sec. 7. G.S. 96-8(6)k.1., k.2., k.4., and k.5. are repealed.

Sec. 8. G.S. 96-8(18) reads as rewritten:

"(18) ~~For benefit years established on and after July 1, 1953, the term 'base period' shall mean the first four of the last six completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. For benefit years established on and after January 1, 1978, the term 'base~~ 'Base period' shall mean means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in G.S. 96-8(17), subdivision (17) of this section."

Sec. 9. G.S. 96-8(23) is repealed.

**Sec. 10.** Sections 1 through 3 of this act become effective August 1, 1994, and apply to benefits paid to claimants whose benefit year begins on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1944

## CHAPTER 681

## AN ACT TO EXPAND THE STATE PORTS TAX CREDIT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-130.41 reads as rewritten:

"§ 105-130.41. (For expiration date see note) Credit for North Carolina State Ports Authority wharfage and handling charges on exports.

(a) Credit. -- ~~A corporation utilizing the deepwater docks at the Wilmington or Morehead City ports for the export of cargo that is loaded on an ocean carrier calling at either port is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the charges paid, directly or indirectly, by the corporation on exported, processed cargo for the current taxable year over an amount equal to the average of the charges paid by the corporation on exported, processed cargo for the current taxable year and the two preceding taxable years. The credit applies to the following charges on exported, processed cargo assessed by the Ports Authority: wharfage, handling charges on break bulk cargo or LCL (less-than-container-load) cargo, bulk through put charges, and the equivalent or like charges on container cargo. To obtain the credit, a corporation must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges paid by the corporation for which a credit is claimed and any other information required by the Secretary.~~

A taxpayer who is a cargo owner utilizing the deep water docks at the Wilmington or Morehead City port for the movement of export cargo onto an ocean carrier calling at either State-owned port terminal, without consideration of the free-on-board (FOB) terms under which the export cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling in, and through put charges assessed on the cargo owned by that cargo owner for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to break-bulk cargo, bulk cargo, and container cargo including less-than-container load cargo. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years. The

maximum cumulative credit that may be claimed by a corporation under this section is one million dollars (\$1,000,000).

(c) Definitions. -- For purposes of this section, the terms 'handling', 'handling in' and 'wharfage' have the meanings provided in the State Ports Tariff Publications, 'Wilmington Tariff, Terminal Tariff #6,' and 'Morehead City Tariff, Terminal Tariff #1.' For purposes of this section, the term 'through put' has the same meaning as 'wharfage' but applies only to bulk products, both dry and liquid."

Sec. 2. G.S. 105-151.22 reads as rewritten:

"§ 105-151.22. (For expiration date see note) Credit for North Carolina State Ports Authority wharfage and handling charges on exports.

(a) Credit. -- ~~A taxpayer utilizing the deepwater docks at the Wilmington or Morehead City ports for the export of cargo that is loaded on an ocean carrier calling at either port is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the charges paid, directly or indirectly, by the taxpayer on exported, processed cargo for the current taxable year over an amount equal to the average of the charges paid by the taxpayer on exported, processed cargo for the current taxable year and the two preceding taxable years. The credit applies to the following charges on exported, processed cargo assessed by the Ports Authority: wharfage, handling charges on break bulk cargo or LCL (less-than-container-load) cargo, bulk through put charges, and the equivalent or like charges on container cargo. To obtain the credit, a taxpayer must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges paid by the taxpayer for which a credit is claimed and any other information required by the Secretary.~~

A taxpayer who is a cargo owner utilizing the deep water docks at the Wilmington or Morehead City port for the movement of export cargo onto an ocean carrier calling at either State-owned port terminal, without consideration of the free-on-board (FOB) terms under which the export cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling in, and through put charges assessed on the cargo owned by that cargo owner for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to break-bulk cargo, bulk cargo, and container cargo including less-than-container load cargo. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowable under this Division, allowable~~, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a taxpayer under this section is one million dollars (\$1,000,000).

(c) Definitions. -- For purposes of this section, the terms 'handling', 'handling in' and 'wharfage' have the meanings provided in the State Ports



Tariff Publications, 'Wilmington Tariff, Terminal Tariff #6,' and 'Morehead City Tariff, Terminal Tariff #1.' For purposes of this section, the term 'through put' has the same meaning as 'wharfage' but applies only to bulk products, both dry and liquid."

Sec. 3. Section 3 of Chapter 977 of the 1991 Session Laws reads as rewritten:

"Sec. 3. The North Carolina State Ports Authority shall report annually to the General Assembly regarding the impact of this act on shipping and economic growth. Each report shall show the overall annual increase in shipping at each port affected by this act for the most recent year for which data is available and for each of the previous 10 years. Each report shall estimate the number of jobs created at each port and in businesses related to port activity at each port since ~~January 1, 1992~~, July 1, 1992, as compared to the number of similar jobs created during the 10 years preceding January 1, 1992, July 1, 1992. Each report shall state the net economic impact on the State as a result of the allowance of tax credits under this act. Each report shall include the number of persons using the tax credit who have stopped, or are likely to stop, using a North Carolina port when the credit expires and to then use a port in another state. The Ports Authority shall file a report on May 1 of 1993, 1994, and 1995, by submitting a copy to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Department of Revenue and the Department of ~~Economic and Community Development~~ Commerce shall cooperate with the Ports Authority in providing the information required in the annual reports."

Sec. 4. This act is effective for taxable years beginning on or after January 1, 1994.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1774

## CHAPTER 682

AN ACT TO ESTABLISH THE CAPITOL PRESERVATION COMMISSION, TO MAKE THE COMMISSION RESPONSIBLE FOR THE CARE AND ADMINISTRATION OF THE NORTH CAROLINA STATE CAPITOL AND UNION SQUARE, AND TO ESTABLISH THE CAPITOL PRESERVATION FUND.

Whereas, any state's grandest symbol is its capitol building and North Carolina has a magnificent monument that symbolizes its citizens' attitudes about and hopes for government; and

Whereas, a state capitol as noted by historian William Seale, "is an architectural symbol that really belongs to the legislatures. Classically inspired architectural features such as the dome - were created by legislators who saw in the dramatic possibilities of architecture a means of expressing liberty."; and

Whereas, North Carolina's elegant graystone and copper domed capitol is considered one of the most beautiful Greek Revival buildings in America and an important exhibition of American craftsmanship in the period just



before power-driven machinery and mass production replaced the skills of artisans and architects; and

Whereas, North Carolina's State Capitol was last rehabilitated and refurbished in the 1970s; and

Whereas, every effort should be made to restore, preserve, and maintain this symbolic center of our State government; and

Whereas, recognizing this need, the State Capitol Foundation, a nonprofit organization established to assist the State to maintain, preserve, furnish, equip, exhibit, and interpret to the public the North Carolina State Capitol and Union Square, has worked tirelessly with the Division of Archives and History, Department of Cultural Resources to restore North Carolina's historic capitol to its mid 1840s' appearance; and

Whereas, it is appropriate that interested citizens and organizations have an opportunity to contribute directly to the enhancement of their State Capitol; and

Whereas, the Foundation through the efforts of members of its board was instrumental in entirely replacing the original 1840 chairs in the House and Senate Chambers of the Capitol with new 1840 reproductions and has now undertaken the repainting of the second floor interiors of the Capitol; and

Whereas, the Foundation continues to play an invaluable role by soliciting gifts that will enable the Division of Archives to perform its duties with regard to the State Capitol; and

Whereas, the most effective way to promote and foster the historic preservation of the State Capitol is through the continued partnership between State government and private citizens and by establishing a commission with members from State government and from the private sector to supervise and coordinate this work; and

Whereas, while the cost of preserving this symbol of North Carolina may be great, the cost of not preserving it is still greater; and

Whereas, as John Sanders noted in one of his many scholarly articles about North Carolina's State Capitol although the Capitol far exceeded the anticipated costs of the architects, building commissioners and legislators who commissioned it, the commissioners continued to go first class and reckoned the cost afterward to achieve their goal of building a monument to self-government that would win national acclaim; and

Whereas, John Sanders noted further that upon the completion of the Capitol, Governor Edward B. Dudley declared it to be "...a noble building and honorable to the State, [that] will descend to posterity as a proud monument of the spirit of the age."; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 2 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 10A. State Capitol Preservation Act.

"§ 143B-80.5. Short title.

This Part is the 'State Capitol Preservation Act' and may be cited by that name.

"§ 143B-80.6. Legislative findings.

The General Assembly finds that:

- (1) The Capitol was designated a National Historic Landmark in 1974 and has been called the most distinguished of all state capitols by architectural historians.
- (2) The North Carolina State Capitol, completed in 1840, is one of the finest and best preserved examples of a major civic building in the Greek Revival Style of architecture. It is also an important exhibition of American craftsmanship in the period just before power-driven machinery and mass production replaced the creative skills of the stone cutter, the joiner, the blacksmith, and the cabinetmaker.
- (3) Improvements to the North Carolina State Capitol to make it more functional through the years, have been made with a sympathetic concern to effect as little change as possible in the building. That approach, coupled with the solidity of the original construction and the continuity of original use, has resulted in a capitol perhaps less changed internally and externally than any other major civic building of its age in the United States. Thus, much of the stonework, the ornamental plaster and ironwork, the furniture of the legislative chambers, and the marble mantels in the Capitol today are original, not restorations or reproductions.
- (4) The Capitol housed all of State government until the 1880s and continued to house the General Assembly until 1963. The Governor and Lieutenant Governor still have their offices in the Capitol and the Secretary of State has a ceremonial office in the Capitol.
- (5) Efforts have been made toward the restoration and preservation of buildings, structures, documents, artifacts, and objects evidencing the history of this eminent State and of the General Assembly, and these efforts should be continued and intensified.
- (6) Particular attention should be given to the preservation of the architectural and historical integrity of the State Capitol Building and to the restoration and preservation of artifacts, documents, and other historical objects and resources located within that building.
- (7) The most effective way to promote and foster the historic preservation of the State Capitol Building is by the establishment of a commission to supervise and coordinate this work.

"§ 143B-80.7. Definitions.The following definitions apply in this Part:

- (1) Commission. -- The Capitol Preservation Commission.
- (2) Fund. -- The Capitol Preservation Fund.
- (3) Union Square. -- The grounds that are the site of the North Carolina State Capitol bounded by Edenton Street, Salisbury Street, Morgan Street, and Wilmington Street. The term includes trees, vegetation, and any monument located on the grounds.

"§ 143B-80.8. Capitol Preservation Commission - creation; purpose; cooperation with the Department of Cultural Resources and the Department of Administration.

(a) There is established the Capitol Preservation Commission within the Department of Cultural Resources. The Commission is to serve as both an advocate and custodian of the State Capitol Building and Union Square. As an advocate the Commission shall ensure that the needs of the State Capitol and Union Square are brought to the attention of the Department of Cultural Resources, the Department of Administration, the Governor, the General Assembly, and the citizens of this State.

(b) The purpose of the Commission is:

- (1) To preserve and maintain the State Capitol building as a structure having historical significance and value to the State of North Carolina. All areas of the State Capitol except the offices, washrooms, and working areas of the first floor shall be preserved as historic shrines and shall be maintained insofar as practicable as they appeared following the restoration of the State Capitol.
- (2) To improve the furnishings of the State Capitol by encouraging gifts and objects of art, furniture, and articles which may have historical value and, with the advice and consent of the Secretary of Cultural Resources, to approve any major changes in the furnishings of the State Capitol.
- (3) To identify and approve any major renovations, improvements, or repairs needed to the State Capitol, Union Square, or monuments in Union Square.
- (4) To keep a complete list of all gifts and articles received by the Capitol, together with their history and value.
- (5) To publicize the work of the Commission and its role in preserving and maintaining the Capitol.

(c) Both the Department of Cultural Resources and the Department of Administration shall cooperate with and assist the Commission in carrying out the provisions of this Part. The Commission may contract with any public or private agency, as appropriate, to provide general services, labor, or other assistance needed to carry out the provisions of this Part. The Department of Administration shall continue to issue permits for the use of Union Square in accordance with G.S. 143-345.1.

"§ 143B-80.9. Capitol Preservation Commission - membership.

(a) The Commission shall be composed of 17 members as follows:

- (1) Three members to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. One of those members shall have experience or background in the restoration of monumental buildings, historical restoration, or fine arts conservation. Two of those members may be appointed upon the recommendation of the Executive Committee of the State Capitol Foundation.
- (2) Three members to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. One of those members shall have experience or background in the restoration of monumental buildings, historical restoration, or fine arts conservation. Two of those members may be appointed upon the recommendation of the Executive Committee of the State Capitol Foundation.

- (3) Six members to be appointed by the Governor. The six members shall have experience or background in the restoration of monumental buildings, historical restoration, or fine arts conservation.
- (4) The Governor or the Governor's designee who shall serve as an ex officio member.
- (5) The Lieutenant Governor or the Lieutenant Governor's designee who shall serve as an ex officio member.
- (6) The Secretary of State or the Secretary's designee who shall serve as an ex officio member.
- (7) The Secretary of the Department of Cultural Resources or the Secretary's designee who shall serve as an ex officio member.
- (8) The Secretary of the Department of Administration or the Secretary's designee who shall serve as an ex officio member.

(b) Criteria for appointments -- Each of the individuals making appointments and recommendations for appointments shall have as a goal that minority persons and women are represented on the Commission and shall seek to achieve a balanced membership representing, to the maximum extent practicable, the State as a whole. No member appointed to serve on the Commission shall be an officer or employee of the legislative branch of State government. No member appointed to serve on the Commission, other than in an ex officio capacity or as a designee of an ex officio member, shall be a member of the executive or judicial branch of State government at the time of the member's appointment.

(c) Terms -- Members shall serve four year terms, except initial appointments shall be for terms as follows:

- (1) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint two members each to serve a term of two years and one member to serve a term of four years. The Speaker of the House of Representatives may consider the recommendations of the Executive Committee of the State Capitol Foundation, in making his recommendations to the General Assembly.
- (2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint two members each to serve a term of two years and one member to serve a term of four years. The President Pro Tempore of the Senate may consider the recommendations of the Executive Committee of the State Capitol Foundation, in making his recommendations to the General Assembly.
- (3) The Governor shall initially appoint three members to serve a term of two years and three members to serve a term of four years.

All initial terms shall commence July 1, 1994.

(d) Chair -- The Governor shall appoint the chair from among the members of the Commission to serve for a term of two years.

(e) Removal of members -- The Commission may remove any member who misses three consecutive meetings of the Commission. A vacancy created under this subsection shall be filled in the manner provided in subsection (f) of this section.

(f) Vacancies -- Vacancies in the membership of the Commission shall be filled for the balance of the unexpired term in the same manner as the original appointment. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(g) Quorum and meeting time -- A majority of all the members of the Commission shall constitute a quorum for the transaction of business. The Commission shall meet initially no later than September 1, 1994. Thereafter, the Commission shall meet not less than twice each year.

"§ 143B-80.10. Compensation and expenses of members; travel reimbursements.

Members of the Commission shall serve without compensation but may receive travel and subsistence as provided in G.S. 138-5 and G.S. 138-6. Reimbursements for travel and subsistence shall be taken from the Capitol Preservation Fund.

"§ 143B-80.11. Capitol Preservation Commission -- powers and duties.

The Commission shall have the following powers and duties and shall exercise those powers and duties with the advice and consent of the Secretary of Cultural Resources:

- (1) Develop a comprehensive plan and program for the historic preservation and restoration of the State Capitol and Union Square.
- (2) Make all repairs, alterations, and improvements to the State Capitol, including the furnishing and refurnishing of the State Capitol, subject to the availability of funds.
- (3) Receive on behalf of the State, gifts or bequests of artifacts, documents, and other historical objects or resources which contribute to the historical significance of the State Capitol.
- (4) Accept grants and subsidies from and enter into agreements or other transactions with any federal agency, State agency, or other entity.
- (5) Enter into contracts and execute all instruments necessary or convenient for carrying on its operations.
- (6) Make budgetary requests and recommendations to the Governor and the General Assembly regarding the funds needed to properly preserve and maintain the Capitol in accordance with Article 1 of Chapter 143 of the General Statutes.
- (7) Administer the Capitol Preservation Fund as provided in G.S. 143B-80.13.
- (8) Contract with the Department of Administration to provide the security needed for the Capitol and Union Square.
- (9) Do all other things necessary or convenient to carry out the powers granted to it by this Part.
- (10) Adopt rules to implement this Part.

"§ 143B-80.12. Commission staff.

The Commission shall appoint and fix the salary of an Executive Director to serve at its pleasure. The Executive Director shall direct the preservation, operation, improvement, maintenance, and repairs needed to the State Capitol Building and Union Square. The Executive Director may hire one secretary to assist with clerical responsibilities.



"§ 143B-80.13. Allocation of space in the State Capitol.

The Governor shall allocate the space in the Capitol, including the working areas, among the various departments as the Governor deems appropriate. However, the Governor shall continue to occupy the space traditionally designated as the Governor's Office. The Lieutenant Governor and the Secretary of State shall also retain space in the Capitol as assigned by the Governor. The Governor may deny the use of the legislative chambers for meetings in order that the chambers, with their historic furnishings, may be better preserved for posterity. However, the General Assembly may hold any sessions in the legislative chambers that it may by resolution deem proper. The Governor shall assign some office space to the Commission in the Capitol. If additional space is needed outside the Capitol for the Commission, the Department of Cultural Resources shall provide that office space as feasible. The Department of Cultural Resources shall not charge the Commission for the space.

"§ 143B-80.14. Capitol Preservation Fund.

(a) There is established within the Department of Cultural Resources a special nonreverting fund to be known as the Capitol Preservation Fund. Revenue in this fund shall be administered by the Commission with the advice and consent of the Secretary of Cultural Resources for the purposes of subsection (b) of this section.

(b) The moneys in the Fund shall be used:

- (1) For the restoration, preservation, and rehabilitation of artifacts, documents, and other historical objects or resources located within and around or associated with the State Capitol and Union Square or acquired by the Commission.
- (2) For the restoration, preservation, and rehabilitation of the building, monuments, and grounds of the State Capitol and Union Square.
- (3) For the acquisition of artifacts, documents, and other historical objects or resources, including but not limited to, statuary, art, or any element which contributes to the historical significance of the State Capitol.

(c) The Commission may accept on behalf of the State gifts, donations, legacies, and usages of money from individuals, organizations, public or private corporations, and other similar entities. The Commission may also solicit and raise moneys from public and private sources through the sale of commemorative medals and other items of a similar nature which promote the historic preservation and restoration of the State Capitol Building and Union Square.

Except for appropriations made by the General Assembly, all moneys received or raised under this section shall be deposited to the Capitol Preservation Fund."

Sec. 2. G.S. 121-9(h) is repealed.

Sec. 3. The Office of State Construction, Department of Administration shall do a capital needs assessment of the State Capitol and shall report to the Capitol Preservation Commission and the 1995 General Assembly regarding its findings and recommendations by delivering copies to the Executive Director of the Capitol Preservation Commission, the

Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Director of the Fiscal Research Division of the Legislative Services Office. The report shall be made not later than seven days after the convening of the 1995 General Assembly.

**Sec. 4.** This act shall be funded from funds available to the Office of the Governor.

**Sec. 5.** Section 2 of this act becomes effective July 1, 1995. The remainder of this act becomes effective July 1, 1994, except that G.S. 143B-80.8(b) and G.S. 143B-80.11(2), (6) and (8) become effective July 1, 1995, so that the Capitol Preservation Commission shall not assume responsibility for the maintenance, repair, preservation, or administration of the Capitol as provided by Part 10A of Article 2 of Chapter 143B of the General Statutes as enacted by this act until July 1, 1995. Initial appointments to the Commission shall be made within 60 days following the date of ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1854

## CHAPTER 683

AN ACT TO PROVIDE FOR CERTIFICATION OF WINDOW GLAZING INSPECTORS, TO APPLY THE WINDOW GLAZING REQUIREMENTS UNIFORMLY, AND TO OTHERWISE MODIFY THE WINDOW GLAZING LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-127 reads as rewritten:

"§ 20-127. *Windshields must be unobstructed.*

(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law, or approved by the Commissioner of Motor Vehicles.

(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. Provided, on any vehicle equipped by its manufacturer with such devices on both the right and left sides of windshield, both such devices shall be in working order. The device required by this subsection shall be of a type approved by the Commissioner.

(c) ~~The windshield, rear and side glasses of a motor vehicle must be free from discoloration which impair the driver's vision or create a hazard. It is unlawful to operate on a highway a motor vehicle that is registered or required to be registered in this State if it has a sunscreen device or tinted film on its windshield, its front side wings, its front side windows adjacent to the right and left of the driver, or its windows to the rear of the driver that~~

was installed after factory delivery and does not meet the requirements of this section.

(d) On or after January 1, 1989, it shall be unlawful to operate a motor vehicle registered or which is required to be registered in this State under this Chapter, upon any highway or public vehicular area with a windshield or a front side window to the immediate right or left of the operator, or a rear window used for visibility, which has been darkened, smoked, or tinted after factory delivery. Provided, however, after first sale of the vehicle, a single application of tinted film which has been registered with and approved by the Commissioner of Motor Vehicles shall be lawful if the manufacturer's label is implanted between the film and glass in the lower left section of each darkened window and is legible from outside the vehicle. The label shall indicate the film registration number, the name and address of the manufacturer and a certification of compliance with North Carolina law. No film or darkening material may be applied on the windshield except to replace the sunshield in the uppermost area as installed by the manufacturer of the vehicle, in which case the label shall be implanted between the film and glass in the upper left section of the windshield and be legible from outside the vehicle. A rear window shall be required for visibility on every vehicle unless the vehicle is equipped with an outside mirror of a type approved by the Commissioner which eliminates the requirement for an inside rearview mirror under the provisions of G.S. 20-126(a) and (b). A sunscreen device or tinted film must be a nonreflective type and may not be red, yellow, or amber in color. A sunscreen device or tinted film may be used only along the top of a windshield and may not extend downward beyond the ASI line or more than five inches, whichever is closer to the top of the windshield. A sunscreen device or tinted film may not be applied to a window other than the windshield if it reduces the total light transmission of the window to less than thirty-five percent (35%) or it has a reflectance of light exceeding twenty percent (20%).

(e) A vehicle that has a window with an after-factory installed sunscreen device or tinting film must display the installer's sticker. No motor vehicle inspection certificate shall be issued on or after January 1, 1988, for a vehicle on which the windshield or front window to the immediate right and left of the operator or the rear window if required for visibility, has been darkened by the installation of tinted film or by other means, except as permitted under subsection (d) of this section.

(f) Before shipping or making any tinted film available for installation on a motor vehicle in this State, the manufacturer shall apply to the Commissioner for approval and registration of its tinted film and for a label to be used in the identification and certification of compliance with light transmittance and reflectance standards. The Commissioner shall approve tinted film to be used in the front windows or a rear window if required for visibility if the manufacturer demonstrates that it has at least fifty percent (50%) light transmittance if it is to be used on front, side, or rear windows and a luminous reflectance of not more than twenty percent (20%). A fee shall be paid by the manufacturer with each application for film approval and registration in the approximate amount of the cost to the Division in the review of the applications.

~~(g) With any delivery of tinted film for installation in vehicles, where approved film is required, the manufacturer shall provide the required labels with written instructions and materials for permanent installation. The use of any label that is not registered, or the misuse of any registered label to mislead motor vehicle safety inspectors, law enforcement officers, or other officials shall constitute a misdemeanor.~~

~~(h) Subsections (d) through (g) of this section shall apply only to darkened, smoked, or tinted film installed on motor vehicle windows after factory delivery and after July 1, 1988, and shall not apply to vehicles that are registered in another state, are not required to be registered in this State, and were in compliance with the standards required in the state of registration at the time of registration.~~

~~(i) Subsections (d) through (g) of this section do not apply to law enforcement K-9 vehicles and films used to darken windows on those units.~~

(f) A person may not apply a sunscreen device or tinting film to a window that does not meet the requirements of this section. A person who applies a sunscreen device or tinting film to a window must place a sticker between the film and the glass in the lower back corner of each glass that is visible from the outside of the vehicle. The sticker must be no larger than one inch by two inches and must identify the installer by name and street address.

(g) The Commissioner shall certify window tinting inspectors. To obtain a certification as a window tinting inspector, a person must meet the qualifications set by the Commissioner and have the testing equipment required by the Commissioner. Certification as a window tinting inspector is valid for four years. The Commissioner may revoke a certification for violations of this section.

(h) Testimony that a window of a vehicle failed to meet the light transmittance or reflectance requirements of this section using equipment, methods, or procedures approved by the Commissioner is *prima facie* evidence of a violation of this section. It is a defense to a window tinting violation under this section if the driver charged produces a certification issued by a certified window tinting inspector showing that the sunscreen device or tinting film meets the requirements of this section. It is a further defense to show that any sign, poster, or other nontransparent material, sunscreen device, or tinting film has been removed or modified so that the vehicle is in compliance with this section.

(i) This section does not apply to windows behind the driver of excursion passenger vehicles as defined in G.S. 20-4.01(27)a., for-hire passenger vehicles as defined in G.S. 20-4.01(27)b., common carriers of passengers as defined in G.S. 20-4.01(27)c., ambulances as defined in G.S. 20-4.01(27)f., property hauling vehicles as defined in G.S. 20-4.01(31), limousines, motor homes, law enforcement K-9 vehicles, or vehicles that are registered in another state and are in compliance with the standards required in that state.

(j) A person who registers a vehicle in this State that has had an after-factory sunscreen device or window tinting installed outside the State that does not display a sticker equivalent to the one required by subsection (e) of



this section must have the device or window tinting inspected by a certified window tinting inspector. If the sunscreen device or window tinting meets the requirements of this section, the inspector must place a unique sticker on the inside of each window to which the sunscreen device or window tinting is applied. The sticker must be placed on the lower back corner of each glass that is visible from the outside of the vehicle. The sticker must be no larger than one inch by two inches and must identify the person affixing the sticker by name and street address. The Commissioner shall issue stickers for placement under this section. The Commissioner may charge a fee, not to exceed two dollars (\$2.00), for a sticker to recoup the cost of producing the unique sticker authorized by this subsection. The fee charged by a person who inspects a window under this subsection may not exceed ten dollars (\$10.00).

(k) A violation of subsection (c) or (j) of this section shall be a misdemeanor punishable as provided in G.S. 20-176(c). A violation of any other subsection of this section is an infraction."

Sec. 2. This act becomes effective March 1, 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

S.B. 591

## CHAPTER 684

AN ACT TO RESTRUCTURE THE HUNTING AND FISHING LICENSE SCHEDULE TO MORE CLEARLY DEFINE LICENSE REQUIREMENTS, TO PROVIDE FOR TWELVE-MONTH HUNTING AND FISHING LICENSES, TO ESTABLISH SHORT-TERM AND SEASON NONRESIDENT LICENSES FOR HUNTING GAME, TO PROVIDE FOR A FREE FISHING DAY, AND TO PROVIDE FOR FOUR NEW MEMBERS OF THE WILDLIFE RESOURCES COMMISSION TO BE APPOINTED BY THE GENERAL ASSEMBLY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 21 of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"§ 113-270.1B. License required to hunt, fish, or trap.

(a) Except as otherwise specifically provided by law, no person may hunt, fish, trap, or participate in any other activity regulated by the Wildlife Resources Commission for which a license is provided by law without having first procured a current and valid license authorizing the activity.

(b) Except as indicated otherwise, all licenses are annual licenses valid from the date of issue for a period of 12 months.

"§ 113-270.1C. Combination hunting and fishing licenses.

(a) The combination hunting and fishing licenses set forth in subsection (b) of this section entitle the holder to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters.

(b) Combination hunting and fishing licenses issued by the Wildlife Resources Commission are:



- (1) Resident Annual Combination Hunting and Fishing License -- \$20.00. This license shall be issued only to an individual resident of the State.
- (2) Disabled Veteran Lifetime Combination Hunting and Fishing License -- \$7.50. This license shall be issued only to an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration and remains valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled.
- (3) Totally Disabled Resident Lifetime Combination Hunting and Fishing License -- \$7.50. This license shall be issued only to an individual resident of the State who is totally disabled and is valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed.

"§ 113-270.1D. Sportsman licenses.

(a) Annual Sportsman License -- \$40.00. This license shall be issued only to an individual resident of the State and entitles the holder to take all wild animals and wild birds, other than waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters.

(b) Lifetime Sportsman Licenses. Lifetime sportsman licenses are valid for the lifetime of the holders and entitle the holders to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

- (1) Infant Lifetime Sportsman License -- \$200.00. This license shall be issued only to an individual under one year of age.
- (2) Youth Lifetime Sportsman License -- \$350.00. This license shall be issued only to an individual under 12 years of age.
- (3) Adult Resident Lifetime Sportsman License -- \$500.00. This license shall be issued only to an individual resident of the State.
- (4) Nonresident Lifetime Sportsman License -- \$1,000. This license shall be issued only to an individual nonresident of the State.
- (5) Age 70 Resident Lifetime Sportsman License -- \$10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age."

**Sec. 2.** G.S. 113-270.2 reads as rewritten:

"§ 113-270.2. Hunting licenses.

(a) ~~Except as otherwise specifically provided by law, no one may take wild animals or wild birds without having first procured a current and valid hunting license.~~ The hunting licenses set forth in subdivisions (1), (3), and (6) of subsection (c) of this section entitle the holder to take, except on game lands, wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons. The comprehensive hunting

licenses of subdivisions (2) and (5) of subsection (c) of this section further entitle the holder to take big game and to use game lands.

~~(a) Except as provided by G.S. 113-270.1A(d), on or after July 1, 1991, a person, regardless of age, may not procure a hunting license or hunt in this State, without producing a certificate of competency pursuant to G.S. 113-270.1A or a hunting license issued prior to July 1, 1991, or making out an affidavit that he had such a license.~~

~~(b) Except when indicated otherwise, all hunting licenses are annual licenses beginning July 1 each year running until the following June 30.~~

(c) The hunting licenses issued by the Wildlife Resources Commission are as follows:

~~(1) Resident Sportsman Combination License -- \$40.00. This license is valid only for use by an individual resident of the State.~~

~~(1a) Lifetime Sportsman Combination Licenses. -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:~~

~~a. Type I available only to an individual under one year of age -- \$200.00.~~

~~b. Type Y available only to an individual under 12 years of age -- \$350.00.~~

~~c. Type A available to a resident individual of any age -- \$500.00.~~

~~d. Type N available to a nonresident individual of any age -- \$1,000.~~

~~(2) Resident Combination Hunting-Fishing License -- \$20.00. This license is valid only for use by an individual resident of the State.~~

~~(3)(1) Resident State Hunting License -- \$15.00. This license is valid only for use by~~ shall be issued only to an individual resident of the State.

~~(3a)(2) Lifetime Resident Comprehensive Hunting License -- \$250.00. This license is valid only for use by~~ shall be issued only to an individual resident of the State, State and is valid for the lifetime of the holder.

~~(4)(3) Resident County Hunting License -- \$10.00. This license is valid for use by~~ shall be issued only to an individual resident of the State and is valid only in the county of residence of the license holder, within the county in which he resides.

~~(5)(4) Controlled Hunting Preserve Hunting License -- \$15.00. This license is valid only for use by~~ shall be issued to an individual resident or nonresident to take only foxes and domestically raised game birds, other than wild turkey, only hunting within a controlled hunting preserve licensed and operated in accordance with this Subchapter, G.S. 113-273(g) and implementing rules of the Wildlife Resources Commission.

~~(6) Nonresident Sportsman Combination License -- \$130.00. This license is valid for use by an individual within the State.~~

~~(7) Repealed by Session Laws 1987, c. 156, s. 1.~~

- (8) ~~Nonresident Six-Day Hunting License -- \$40.00. This license is valid only for use on six consecutive hunting days by an individual within the State. Consecutive hunting days do not include Sundays except on military reservations where Sunday hunting is permitted.~~
- (8a)(5) Resident Annual Comprehensive Hunting License -- \$30.00. This license is valid only for use by shall be issued only to an individual resident of the State.
- (8b) ~~Nonresident Comprehensive Hunting License -- \$80.00. This license is valid for use by an individual within the State.~~
- (9) ~~Disabled Veteran Lifetime Combination Hunting-Fishing License -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.~~
- (10) ~~[Reserved.]~~
- (11) ~~Age 70 Lifetime Sportsman Combination License -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.~~
- (12) ~~Totally Disabled Resident Combination Hunting-Fishing License -- \$7.50. This license is valid only for use by an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled.~~
- (6) Nonresident State Hunting License. This license shall be issued only to a nonresident. The nonresident State hunting licenses issued by the Wildlife Resources Commission are:
- Season License -- \$40.00.
  - Six-Day License -- \$25.00. This license is valid for the six consecutive dates indicated on the license.
- (d) One dollar (\$1.00) of the proceeds received from the sale of each nonresident sportsman combination license, each nonresident comprehensive hunting license, and each nonresident six-day hunting license must hunting license sold pursuant to subdivision (6) of subsection (c) of this section shall be set aside by the Wildlife Resources Commission and contributed to a proper agency or agencies in the United States for expenditure in Canada for the propagation, restoration and management management, and control of migratory waterfowl."

Sec. 3. G.S. 113-270.3 reads as rewritten:

"§ 113-270.3. *Special activity licenses; big game kill reports.*

(a) In addition to any hunting, trapping, or fishing license that may be ~~required,~~ required pursuant to G.S. 113-270.1B(a), individuals engaging in specially regulated activities must have the appropriate special activity license prescribed in this section before engaging in the regulated activity. ~~Special activity licenses are annual licenses issued beginning July 1 each year running until the following June 30.~~

(b) The special activity licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident Big Game Hunting License -- \$10.00. This license is ~~valid only for use by~~ shall be issued only to an individual resident of the State and ~~must be procured before taking any big game within the State.~~ entitles the holder to take big game by all lawful methods and during all open seasons.
- (2) ~~Repealed by Session Laws 1991, c. 671, s. 1.~~
- (3) Primitive Weapons Hunting License -- \$10.00. This license is ~~valid for use only by an individual resident of the State and must be procured before taking any wild animals or birds with a primitive weapon during any special season for hunting with primitive weapons established by the Wildlife Resources Commission. During the regular season, a primitive weapon may be used without any special license unless its use is prohibited. For the purposes of this section a "primitive weapon" includes a bow and arrow, muzzle-loading firearm, and any other primitive weapon specified in the rules of the Wildlife Resources Commission.~~
- (2) Nonresident Big Game Hunting License. This license shall be issued only to an individual nonresident of the State and entitles the holder to take big game by all lawful methods and during all open seasons. The nonresident big game hunting licenses issued by the Wildlife Resources Commission are:
  - a. Season License -- \$40.00.
  - b. Six-Day License -- \$25.00. This license is only valid for the six consecutive dates indicated on the license.
- (4)(3) Game Land License -- \$15.00. This license ~~is valid for use only by~~ shall be issued to an individual resident or nonresident of the State and entitles the holder to hunt and trap on game lands managed by the Wildlife Resources Commission. The Wildlife Resources Commission may, pursuant to G.S. 113-264(a), designate in its rules other activities on game lands that require purchase of this license and may charge additional fees for use of specially developed facilities. must be procured before hunting or trapping on game lands or fishing in managed waters on game lands. Managed waters include public mountain trout waters and other public waters, or private ponds, lying wholly or partly on game lands and designated as managed waters by the Wildlife Resources Commission. Possession of this license does not exempt its holder from payment of any applicable special use fees that may be prescribed by the Wildlife Resources Commission under the authority of G.S. 113-264(a), such as fees for field trials on game lands.
- (5)(4) Falconry License -- \$10.00. This license ~~is valid for use by~~ shall be issued to an individual resident or nonresident of within the State and must be procured before:
  - a. Taking, importing, transporting, or possessing a raptor; or
  - b. Taking wildlife by means of falconry.



The Wildlife Resources Commission may issue classes of falconry licenses necessary to participate in the federal/State permit system, require necessary examinations before issuing licenses or permits to engage in various authorized activities related to possession and maintenance of raptors and the sport of falconry, and regulate licenses as required by governing federal law and rules. To defray the costs of administering required examinations, the Wildlife Resources Commission may charge reasonable fees upon giving them. To meet minimum federal standards plus other State standards in the interests of conservation of wildlife resources, the Wildlife Resources Commission may impose all necessary controls, including those set out in the sections pertaining to collection licenses and captivity licenses, and may issue permits and require reports, but no collection license or captivity license is needed in addition to the falconry license.

~~(6)~~(5) Migratory Waterfowl Hunting License -- \$5.00. This license ~~is valid for use by~~ shall be issued to an individual resident or nonresident of within the State and entitles the holder to take ~~must be procured before taking any migratory waterfowl in accordance with applicable laws and regulations. within the State.~~ The Wildlife Resources Commission may implement this license requirement through the sale of an official waterfowl stamp which may be a facsimile, in an appropriate size, of the waterfowl conservation print authorized by G.S. 113-270.2B. An amount not less than one-half of the annual proceeds from the sale of this license shall be used by the Commission for cooperative waterfowl habitat improvement projects through contracts with local waterfowl interests, with the remainder of the proceeds to be used by the Commission in its statewide programs for the conservation of waterfowl.

(c) Any individual who kills any species of big game must report the kill to the Wildlife Resources Commission. The ~~commission~~ Commission may by rule prescribe the method of making the report, prescribe its contents, and require positive identification of the carcass of the kill, by tagging or otherwise. The Wildlife Resources Commission may administratively provide for the annual issuance of big game tags or other identification for big game authorized by this section to holders of lifetime sportsman licenses and lifetime comprehensive hunting licenses.

(d) ~~Any individual who possesses a current and valid lifetime or resident or nonresident sportsman combination license may at lawful times and places engage in any specially regulated activity without any of the licenses required by subdivisions (1) through (4) of subsection (b). Any individual who possesses a current and valid lifetime sportsman combination license may engage in hunting migratory waterfowl without the license required by subdivision (b)(6) of this section. The Wildlife Resources Commission may administratively provide for the annual issuance of big game tags, or other identification for big game authorized by subsection (c), to holders of lifetime sportsman combination licenses.~~



Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S. 113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions (1) and (3) of subsection (b) of this section.

~~(e) Any individual who possesses a current and valid resident or nonresident comprehensive fishing license may at lawful times and places fish in managed waters on game lands without the game land license required by subdivision (4) of subsection (b).~~

When the Wildlife Resources Commission establishes a primitive weapons season pursuant to G.S. 113-291.2(a), all of the combination hunting and fishing licenses established in G.S. 113-270.1C, sportsman licenses established in G.S. 113-270.1D, and hunting licenses established in G.S. 113-270.2(c)(1), (2), (3), (5), and (6) entitle the holder to participate. For purposes of this section, 'primitive weapons' include bow and arrow, muzzle-loading firearm, and any other primitive weapon specified in the rules of the Wildlife Resources Commission."

Sec. 4. G.S. 113-271 reads as rewritten:

"§ 113-271. Hook-and-line licenses in inland fishing waters.

(a) Except as otherwise provided in this Article, no one may fish by means of hook and line in inland fishing waters without having first procured a current and valid hook-and-line fishing license. All the hook-and-line fishing licenses set forth in subsection (b) of this section entitle the holder to fish with hook and line in the inland and joint waters of the State, but not in public mountain trout waters. The licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section further entitle the holder to fish with hook and line in public mountain trout waters.

~~(b) Except when indicated otherwise, all hook-and-line fishing licenses are annual licenses. Annual fishing licenses are issued beginning July 1 each running until the following June 30.~~

~~(c) Repealed by Session Laws 1979, c. 830, s. 1.~~

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

~~(1) Repealed by Session Laws 1979, c. 830, s. 1.~~

~~(1a) Resident Sportsman Combination License -- \$40.00. This license is valid only for use by an individual resident of the State.~~

~~(1b) Resident comprehensive fishing licenses valid only for use by individual residents of the State:~~

~~a. One day -- \$10.00.~~

~~b, c. Repealed by Session Laws 1987, c. 156, s. 8.~~

~~d. Annual -- \$25.00.~~

(1) Resident Annual Comprehensive Fishing License -- \$20.00. This license shall be issued only to an individual resident of the State.

- (1c) ~~Lifetime Sportsman Combination Licenses — These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue.~~
- a. ~~Type I available only to an individual under one year of age — \$200.00.~~
  - b. ~~Type Y available only to an individual under 12 years of age — \$350.00.~~
  - c. ~~Type A available to a resident individual of any age — \$500.00.~~
  - d. ~~Type N available to a nonresident individual of any age — \$1,000.~~
- (2) ~~Resident Combination Hunting-Fishing License — \$20.00. This license is valid only for use by an individual resident of the State.~~
- (2a) (2) Resident State Fishing License -- \$15.00. This license is valid only for use by shall be issued only to an individual resident of the State.
- (2b) (3) Lifetime Resident Comprehensive Fishing License -- \$250.00. This license is valid only for use by shall be issued only to an individual resident of the State, State and is valid for the lifetime of the holder.
- (3) (4) Resident County Fishing License -- \$10.00. This license is valid only for use by shall be issued only to an individual resident of the State and is valid only within the county in which he resides, of residence of the license holder.
- (4) ~~Resident one-day State fishing license valid only for use by an individual resident of the State during the day indicated: -- \$5.00.~~
- a. c. ~~Repealed by Session Laws 1987, c. 156, s. 8.~~
- (4a) ~~Nonresident Sportsman Combination License -- \$130.00. This license is valid for use by an individual within the State.~~
- (4b) ~~Nonresident comprehensive fishing licenses valid for use by an individual within the State only during the day, consecutive days, or year indicated:~~
- a. ~~One day -- \$15.00.~~
  - b. ~~Three days -- \$25.00.~~
  - c. ~~Repealed by Session Laws 1987, c. 156, s. 8.~~
  - d. ~~Annual -- \$50.00.~~
- (5) Nonresident State Fishing License -- \$30.00. This license is valid for use by shall be issued to an individual within nonresident of the State.
- (6) ~~Nonresident variable short-term State fishing licenses which are valid only for use by an individual within the State during the day or consecutive days indicated at the following rates:~~
- a. ~~One day -- \$10.00.~~
  - b. ~~Three days -- \$15.00.~~
  - c. ~~Repealed by Session Laws 1987, c. 156, s. 8.~~
- (6) Short-Term Fishing Licenses. Short-term fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term fishing licenses issued by the Wildlife Resources Commission are:

- a. Resident one day -- \$5.00. This license shall be issued only to a resident of the State.
  - b. Nonresident one day -- \$10.00. This license shall be issued only to a nonresident of the State.
  - c. Nonresident three day -- \$15.00. This license shall be issued only to a nonresident of the State.
- (7) Lifetime Fishing License for the Legally Blind -- No charge. This license ~~is valid only for use by~~ shall be issued only to an individual resident of the State who ~~has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~
- (8) ~~Disabled Veteran Lifetime Combination Hunting-Fishing License -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.~~
- (9) ~~[Reserved.]~~
- (10) ~~Age 70 Lifetime Sportsman Combination License -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.~~
- (11) ~~Totally Disabled Resident Combination Hunting-Fishing License -- \$7.50. This license is valid only for use of an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled.~~
- (12)(8) ~~Rest Home Resident Fishing License -- No charge. This license is valid only for use of~~ shall be issued only to an individual resident of the State who resides in a domiciliary home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as he remains a resident of a domiciliary home.
- (e)(9) Special Guest Fishing License -- \$50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles persons to fish from the shore or any pier or dock originating from the property without any additional fishing license. A special guest fishing license, to be sold for an annual fee of fifty dollars (\$50.00) upon application to the Wildlife Resources Commission in the form which they may require, may be purchased by the owner or lessee of private property bordering inland or joint fishing waters entitling persons to fish from such waterfront property and any pier or dock originating on such property without any additional inland fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock

nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines of the site of posting. The guest fishing license is not transferable as to person or location. These provisions shall not apply to residents of the Cherokee Indian Reservation."

Sec. 5. G.S. 113-272 reads as rewritten:

"§ 113-272. Special trout licenses. license.

"(a) In addition to such hook-and-line fishing license as may be required in G.S. 113-271, Except as provided in G.S. 113-270.1D and G.S. 113-271(a), no one may fish in public mountain trout waters without having first procured a current and valid special trout license. license in addition to a hook-and-line fishing license required in G.S. 113-271. When public mountain trout waters occur on game lands, this license entitles the holder to use game lands only for the purpose of access to public mountain trout waters to fish with hook and line.

(b) Except as otherwise indicated, special trout licenses or annual licenses issued beginning July 1 each year running until the following June 30.

(c) Public mountain trout waters are those waters so designated by the Wildlife Resources Commission which are managed and regulated to sustain a mountain trout fishery.

(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

(1) Repealed by Session Laws 1979, c. 830, s. 1.

(1a) Resident Sportsman Combination License -- \$40.00. This license is valid in public mountain trout waters for use only by an individual resident of the State.

(1a1) Resident comprehensive fishing licenses valid for use in public mountain trout waters only by an individual resident of the State:

a. One day -- \$10.00.

b. c. Repealed by Session Laws 1987, c. 156, s. 10.

d. Annual -- \$25.00.

(1a2) Lifetime Sportsman Combination Licenses -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:

a. Types I available only to an individual under one year of age -- \$200.00.

b. Types Y available only to an individual under 12 years of age -- \$350.00.

c. Type A available to a resident individual of any age -- \$500.00.

d. Type N available to a nonresident individual of any age -- \$1,000.

(1b) Resident Special Trout License -- \$10.00. This license is valid only for use by shall be issued to an individual resident or

nonresident of the State and entitles the holder to fish with hook and line in public mountain trout waters.

- (1b1) ~~Lifetime Resident Comprehensive fishing license — \$250.00.~~
- (1c) ~~Nonresident Sportsman Combination License — \$130.00. This is valid for use by an individual within the State in public mountain trout waters.~~
- (1d) ~~Nonresident Comprehensive Fishing Licenses valid for use in public mountain trout waters only by an individual within the State during the day, consecutive days, or year indicated:~~
  - a. ~~One day — \$15.00.~~
  - b. ~~Three days — \$25.00.~~
  - c. ~~Repealed by Session Laws 1987, c. 156, s. 10.~~
  - d. ~~Annual — \$50.00.~~
- (2) ~~Repealed by Session Laws 1987, c. 156, s. 10.~~
- (3) ~~Lifetime Fishing License for the Legally Blind — No charge. This is valid in public mountain trout waters for use only by an individual resident of the State. It is issued upon the terms set out in G.S. 113-271(d)(8)."~~

Sec. 6.1. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for a ~~Type I or Type Y lifetime sportsman combination license~~ an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth certificate of the individual to be named as the license holder."

Sec. 6. G.S. 113-276 is amended by adding a new subsection to read:

"(m) Notwithstanding any other provision of law, the fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on this day. All other laws and rules pertaining to hook-and-line fishing still apply."

Sec. 7. G.S. 113-275(b1) reads as rewritten:

"(b1) No ~~resident~~ hunting or fishing license issued to a qualified applicant resident under the provisions of G.S. 113-270.1C, 113-270.1D, 113-270.2, 113-270.3, 113-271, or 113-272 becomes invalid for use during the term for which it is issued by reason of a removal of the residence of the licensee to another state. ~~This provision applies both to renewable and lifetime licenses.~~"

Sec. 8. G.S. 113-276(c) reads as rewritten:

"(c) Except as otherwise provided in this Subchapter, every landholder, his spouse, and dependents under 18 years of age residing with him may take wildlife upon the land held by the landholder without any license required by G.S. 113-270.1B or G.S. 113-270.3(a), except that such persons are not exempt from the falconry license described in G.S. 113-270.3(b)(4). G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, 113-271, or 113-272."

Sec. 9. G.S. 113-276(d) reads as rewritten:

"(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting, trapping, and fishing hunting and trapping license requirements of G.S.113-270.1B(a) and G.S. 113-



270.3(a), except the falconry license described in G.S. 113-270.3(b)(4), and the fishing license requirement of G.S. 113-272, if: G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, and 113-272 if:

- (1) He is accompanied by a responsible adult who is in compliance with applicable license requirements; or
- (2) He is carrying a current and valid license appropriate to the activity which has been issued to one of his parents or to his guardian.

Individuals under 16 years of age are exempt from the fishing license requirements of G.S. 113-270.1B and G.S. 113-271."

**Sec. 10.** G.S. 143-250.1(c) reads as rewritten:

"(c) The assets of the Wildlife Endowment Fund shall be derived from the following:

- (1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund;
- (2) The proceeds from the sale of lifetime sportsman combination licenses issued pursuant to G.S. 113-270.1D; ~~in accordance with G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2);~~
- (3) The proceeds from the sale of lifetime hunting and lifetime fishing licenses pursuant to G.S. 113-270.2(c)(2) and G.S. 113-271(d)(3); ~~in accordance with G.S. 113-270.2(c)(3a) and 113-271(d)(2b);~~
- (4) The proceeds of lifetime subscriptions to the magazine Wildlife in North Carolina at such rates as may be established from time to time by the Wildlife Resources Commission;
- (5) Any amount in excess of the statutory fee for a particular lifetime license or lifetime subscription shall become an asset of the fund and shall qualify as a tax exempt donation to the State;
- (6) Such other sources as may be specified by law."

**Sec. 11.** G.S. 143-250.1(d) reads as rewritten:

"(d) The Wildlife Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds:

- (1) Any limitations or restrictions specified by the donors on the uses of the income derived from gifts, grants and voluntary contributions shall be respected but shall not be binding.
- (2) No expenditures or disbursements from the income from the proceeds derived from the sale of Infant Lifetime Sportsman or Youth Lifetime Sportsman Licenses pursuant to G.S. 113-270.1D(b)(1) or (2) ~~types I and Y lifetime sportsman combination licenses specified in G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2)~~ shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The State Treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of income within the fund which remains encumbered by and which is free of this restriction. For such purpose, the executive director shall cause deposits of proceeds from Infant Lifetime Sportsman Licenses ~~type I licenses~~

to be distinguished and deposits of proceeds from Youth Lifetime Sportsman Licenses ~~type Y licenses~~ to be accompanied by information as to the ages of the license recipients.

- (3) No expenditure or disbursement shall be made from the principal of the Wildlife Endowment Fund except as otherwise provided by law.
- (4) The income received and accruing from the investments of the Wildlife Endowment Fund must be spent only in furthering the conservation of wildlife resources and the efficient operation of the North Carolina Wildlife Resources Commission in accomplishing the purposes of the agency as set forth in G.S. 143-239."

**Sec. 12.** G.S. 143-250.1(h) reads as rewritten:

"(h) In the event of a future dissolution of the Wildlife Resources Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Wildlife Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund. No repeal or modification of this section or of G.S. 143-239 shall alter the fundamental purposes to which the Wildlife Endowment Fund may be applied. No future dissolution of the Wildlife Resources Commission or substitution of any agency in its stead shall invalidate any lifetime license issued in accordance with G.S. 113-270.1D(b), 113-270.2(c)(2), or 113-271(d)(3). ~~G.S. 113-270.2(c)(1a) or (3a), 113-271(d)(1c) or (2b), or 113-272(d)(1a2).~~"

**Sec. 13.** G.S. 143-240(a) reads as rewritten:

"(a) There is hereby created the Wildlife Resources Commission of the Department of Environment, Health, and Natural Resources which shall consist of ~~13~~ 17 citizens of North Carolina who shall be appointed as is provided in G.S. 143-241.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6 as the case may be, which shall be paid from fees collected by the Wildlife Resources Commission."

**Sec. 14.** G.S. 143-241 reads as rewritten:

"§ 143-241. *Appointment and terms of office of Commission members; filling of vacancies.*

The members of the North Carolina Wildlife Resources Commission shall be appointed as follows:

The Governor shall appoint one member each from the first, fourth, and seventh wildlife districts to serve six-year terms;

The Governor shall appoint one member each from the second, fifth, and eighth wildlife districts to serve two-year terms;

The Governor shall appoint one member each from the third, sixth, and ninth wildlife districts to serve four-year terms;

The Governor shall also appoint two at-large members to serve four-year terms.

The General Assembly shall appoint ~~two~~ six members of the Commission to serve two-year terms, ~~one~~ three upon the recommendation of the Speaker of the ~~House and House~~, one upon the recommendation of the President of the Senate, and two upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. Of the members appointed upon the recommendation of the Speaker of the House and upon the recommendation of the President Pro Tempore of the Senate, at least one of each shall be a member of the political party to which the largest minority of the members of the General Assembly belongs.

Thereafter as the terms of office of the members of the Commission appointed by the Governor from the several wildlife districts expire, their successors shall be appointed for terms of six years each. As the terms of office of the members of the Commission appointed by the General Assembly expire, their successors shall be appointed for terms of two years each. All members appointed by the Governor serve at the pleasure of the Governor that appointed them and they may be removed by that Governor at any time. A successor to the appointing Governor may remove a Commission member only for cause as provided in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of that body and may be removed by law at any time. In the event that a Commission member is removed, the member appointed to replace the removed member shall serve only for the unexpired term of the removed member."

**Sec. 15.** The initial terms of office of the four new members of the Wildlife Resources Commission established in Sections 13 and 14 of this act shall expire on the same date in 1995 as the terms of the other members appointed by the General Assembly.

**Sec. 16.** Section 6 and Sections 13 through 15 of this act are effective upon ratification. The remainder of this act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

H.B. 1142

## CHAPTER 685

AN ACT TO ESTABLISH THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION ACT AND TO MAKE AMENDMENTS TO THE LAWS GOVERNING LICENSED PROFESSIONAL COUNSELORS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 90 of the General Statutes is amended by adding a new Article to read:

### "ARTICLE 5C.

"North Carolina Substance Abuse Professionals Certification Act.

"§ 90-113.30. Declaration of purpose.

The North Carolina Substance Abuse Professionals Certification Board, established by G.S. 90-113.32, is recognized as the certifying authority for certified substance abuse counselors and certified substance abuse prevention consultants in order to safeguard the public health, safety, and welfare, to

protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of certified substance abuse counselors and certified substance abuse prevention consultants, to provide for the establishment of standards for the education of substance abuse counselors and substance abuse prevention consultants, and to ensure the availability of substance abuse counseling services and substance abuse prevention services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of Board-certified persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant certification.

"§ 90-113.31. Definitions.

In this Article, unless the context clearly requires otherwise, the following definitions apply:

- (1) 'Board' means the North Carolina Substance Abuse Professionals Certification Board.
- (2) 'Certified substance abuse counselor' means any person certified to practice substance abuse counseling in accordance with the provisions of this Article.
- (3) 'Substance abuse counseling' means the assessment, evaluation, or provision of counseling to persons suffering from substance abuse or dependency, alcohol abuse or dependency, or drug abuse or dependency.
- (4) 'Certified substance abuse prevention consultant' means any person certified to practice substance abuse prevention in accordance with the provisions of this Article.
- (5) 'Prevention' means the reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

"§ 90-113.32. Board.

(a) The Board is created as the certifying authority for substance abuse counselors and substance abuse prevention consultants in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the Speaker of the House of Representatives, and one member appointed by the President Pro Tempore of the Senate. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professionals Certification Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in



subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of 19 members, all of whom shall reside in North Carolina, appointed or elected as follows:

- (1) Eleven professionals certified pursuant to this Article and elected by the certified professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State;
- (2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominations and Elections Committee established by subsection (d) of this section and elected by the Board;
- (3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, appointed by the Chief of Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, at least one of whom is from the Substance Abuse Services Section;
- (4) One member of the public at large appointed by the Governor; and
- (5) One member of the public at large appointed by the Speaker of the House of Representatives and one member of the public at large appointed by the President Pro Tempore of the Senate.

No members of the General Assembly shall serve on the Board.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified under this Article whenever such a vacancy occurs and when elected members' terms are due to expire. The certified professionals shall submit to the Committee all nominations within 90 days before the election of new Board members. The Committee shall furnish all certified professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for three-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after



being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall appoint temporary members to serve until the next membership election. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

"§ 90-113.33. Board; powers and duties.

The Board shall:

- (1) Examine and determine the qualifications and fitness of applicants for certification to practice in this State as substance abuse counselors and as substance abuse prevention consultants;
- (2) Issue, renew, deny, suspend, or revoke certification to practice in this State or reprimand or otherwise discipline substance abuse counselors and substance abuse prevention consultants in this State;
- (3) Deal with issues concerning reciprocity;
- (4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exist;
- (5) Employ the professional and clerical personnel necessary to carry out the provisions of this Article. The Board may purchase or rent necessary office space, equipment, and supplies;
- (6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a 'contested case', as defined in Chapter 150B, arises;
- (7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable;
- (8) Establish fees for applications for examination, certificates of certification and renewal, and other services provided by the Board; and
- (9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ 90-113.34. Records to be kept; copies of records.

The Board shall obtain documentation of all proceedings under this Article and a record of all persons certified under it. The record shall show the name, last known place of business, last known place of residence, and date and number of the certificate of certification as a certified substance abuse counselor or certified substance abuse prevention consultant for every living certified person. Any interested person in the State is entitled to obtain a copy of that record on application to the Board and upon payment of a reasonable charge that is based on the costs involved in providing the copy. The Board shall keep a hard copy of all records.

"§ 90-113.35. Disposition of funds.

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"§ 90-113.36. Certificates of certification.

(a) The Board shall furnish a certificate of certification to each applicant successfully completing the requirements for certification.

(b) The Board may furnish a certificate of certification to any person in another state or territory if the individual's qualifications were, at the date of registration or certification, substantially equal to the requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

"§ 90-113.37. Renewal of certification; lapse; revival.

(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of 60 hours of those continuing education requirements established by the Board. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.

(b) The Board shall establish the manner in which lapsed certification may be revived or extended.

"§ 90-113.38. Maximums for certain fees.

The combined fees to obtain a certificate of certification may not exceed three hundred dollars (\$300.00). The fee to renew a certificate may not exceed one hundred dollars (\$100.00).

"§ 90-113.39. Standards for certification.

The Board shall establish standards for certification of substance abuse professionals. The certification standards of the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse and of the National Association of Alcoholism and Drug Abuse Counselors may be used as guidelines for the Board's standards. The Board shall publish these required standards separately from its rules so as to provide easy access to the standards.

"§ 90-113.40. Requirements for certification.

The Board shall issue a certificate certifying an applicant as a 'Certified Substance Abuse Counselor' or as a 'Certified Substance Abuse Prevention Consultant' if:

- (1) The applicant is of good moral character;
- (2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44;

- (3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it;
- (4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate;
- (5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board;
- (6) The applicant has completed 270 hours of Board-approved education;
- (7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical Training and has provided a Board-approved supervision contract between the applicant and an approved supervisor;
- (8) The applicant has completed either a total of three years of supervised experience in the field, whether paid or volunteer, or, if a graduate of a Board-approved masters degree program, a total of 18 months of supervised experience in the field, whether paid or volunteer; and
- (9) The applicant has successfully completed a written examination and an oral examination promulgated and administered by the Board.

The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

"§ 90-113.41. Examination.

(a) Applicants for certification under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification under this Article shall be examined in an examination that is consistent with the examination requirements of the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse.

(c) Applicants for certification shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts.

"§ 90-113.42. Exemptions.

It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. Accordingly, this Article does not apply to any person registered, certified, or licensed by the State to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which he is registered, certified, or licensed. Only individuals certified under this Article may use the title 'certified substance abuse counselor' or 'certified substance abuse prevention consultant'.

"§ 90-113.43. Illegal practice; misdemeanor penalty.

Except as otherwise authorized in this Article, no person shall:

- (1) Practice, attempt to practice, or supervise while holding out to be a certified substance abuse counselor or a certified substance abuse prevention consultant without first having obtained a certificate of certification from the Board;
- (2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a certified substance abuse counselor or a certified substance abuse prevention consultant unless this person is certified pursuant to this Article;
- (3) Practice or attempt to practice as a certified substance abuse counselor or certified substance abuse prevention consultant with a revoked, lapsed, or suspended certification;
- (4) Aid, abet, or assist any uncertified person to practice as a certified substance abuse counselor or certified substance abuse prevention consultant in violation of this Article;
- (5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a certified substance abuse counselor or a certified substance abuse prevention consultant unless that person is so certified under this Article; or
- (6) Otherwise violate any of the provisions of this Article or any of the rules adopted pursuant to it.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"§ 90-113.44. Grounds for disciplinary action.

Grounds for disciplinary action include:

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain certification or renewal of certification;
- (2) The use of drugs or alcoholic beverages to the extent that professional competency is affected, until proof of rehabilitation can be established;
- (3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law, until proof of rehabilitation can be established;
- (4) Conviction of a felony or other public offense involving moral turpitude, until proof of rehabilitation can be established;
- (5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be established;
- (6) Engaging in any act or practice violative of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation;
- (7) The commission of an act of malpractice, gross negligence, or incompetence in the practice of substance abuse counseling or in substance abuse prevention consulting;
- (8) Practicing as a certified substance abuse counselor or as a certified substance abuse prevention consultant without a valid certificate; and



(9) Engaging in conduct that could result in harm or injury to the public.

"§ 90-113.45. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"§ 90-113.46. Application of requirements of Article.

All persons certified by the North Carolina Substance Abuse Professionals Certification Board, Inc., as of the effective date of this Article shall be certified by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it."

**Sec. 2.** G.S. 90-332.1 is amended by adding a new subsection to read:

"(d) Nothing in this Article shall prevent a person from performing substance abuse counseling or substance abuse prevention consulting as defined in Article 5C of this Chapter."

**Sec. 3.** G.S. 90-338 reads as rewritten:

"§ 90-338. Exemptions.

Applicants holding certificates of registration as Registered practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of G.S. 90-336(b). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselors and shall be licensed upon passing the Board examination and or meeting the experience requirements:

- (1) An applicant who was engaged in the practice of counseling before July 1, 1993.
- (2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, provided the applicant was enrolled in the masters program prior to July 1, 1994."

**Sec. 4.** This act becomes effective July 1, 1994 and applies to requirements imposed on or after that date, and to causes of action, whether civil, criminal, or administrative, arising on or after that date.



In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 650

## CHAPTER 686

AN ACT TO AMEND ARTICLE 19 OF CHAPTER 130A OF THE GENERAL STATUTES REGARDING ASBESTOS HAZARD MANAGEMENT AND TO MAKE CERTAIN TECHNICAL CHANGES TO CONFORM WITH RECENT FEDERAL REQUIREMENTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 130A-22 is amended by adding two new subsections to read:

"(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars (\$1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money the violator saved by noncompliance.
- (6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
- (7) The cost to the State of the enforcement procedures.
- (8) If applicable, the size of the renovation and demolition involved in the violation.

Administrative penalties imposed by the Secretary under this subsection or subsection (b2) of this section shall be credited to the General Fund as nontax revenue.

(b2) The penalty for violations of the asbestos NESHAP for renovations and demolitions, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for renovations and demolitions that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for renovations and demolitions is not considered to continue during the period a person who

has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation."

Sec. 2. G.S. 130A-444 reads as rewritten:

"§ 130A-444. *Definitions.*

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

- (1) 'AHERA' means Title II, Asbestos Hazard Emergency ~~Response~~, Response Act of the Toxic Substances Control Act, Pub. L. 99-519, 100 Stat. 2970, 15 U.S.C. § 2601, et seq., as amended. amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 ('ASHARA').
- (2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.
- (3) 'Asbestos containing material' means material which contains more than one percent (1%) ~~asbestos by area~~, asbestos, including friable asbestos containing material and nonfriable asbestos containing material.
- (3a) 'Asbestos NESHAP for renovations and demolitions' means Title II, National Emission Standards for Hazardous Air Pollutants, specifically those regulations pertaining to regulation of asbestos in renovations and demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as amended.
- (4) 'Abatement' means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing material. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.
- (5) 'Friable' means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.
- (6) 'Management' means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.
- (6a) 'Person' means an individual, a corporation, a company, an association, a partnership, a unit of local government, a State or federal agency, or any other legal entity.
- (7) 'Public area' means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590, ~~29 U.S.C. § 651 et seq., as amended.~~ (codified as amended in scattered sections of U.S.C.).
- (8) 'Removal' means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.

- (9) 'Residence' means any single family dwelling or any multi-family dwelling of fewer than 10 units."

Sec. 3. G.S. 130A-447 reads as rewritten:

"§ 130A-447. Accreditation of persons performing asbestos management-management and approval of training courses.

(a) No person shall commence or continue to perform asbestos management activities unless he has been accredited by the Department. No person shall commence or continue to provide asbestos related training courses unless the course has been approved by the Department. The Commission shall adopt rules governing the accreditation of ~~such persons,~~ persons performing asbestos management activities and the approval of training courses. Such rules shall include categories of accreditation and shall specify appropriate education, experience, and training requirements. The rules shall establish separate categories of accreditation for inspectors, management planners, abatement designers, supervisors, workers, air monitors, and ~~management consultants,~~ supervising air monitors. These rules shall be at least as stringent as the accreditation plan required under AHERA and regulations adopted pursuant thereto.

(b) A person who applies for accreditation in the worker category may engage in asbestos containing material management activities as though he were accredited in the worker category for up to 90 days after the date he submits his application. No person whose application is rejected may continue to engage in asbestos containing material management activities under this subsection.

(c) The following persons are exempt from the accreditation requirements:

- (1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing ~~asbestos containing material management activities in nonpublic areas of the building;~~ small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993).
- (2) A person performing asbestos containing material management activities in his personal ~~residence;~~ residence.
- (3) Governmental regulatory personnel performing inspections of asbestos containing material management services under authority of federal, State, or local regulations or rules; and activities solely for the purpose of determining compliance with applicable statutes or regulations.
- (4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when ~~such activities disturb less than 35 cubic feet, 160 square feet, or 260 linear feet of asbestos containing material per job, or when engaged in such activities under the supervision of an accredited supervisor, performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993).~~

Sec. 4. G.S. 130A-448 reads as rewritten:

"§ 130A-448. Asbestos management accreditation ~~fees~~ fees and course approval fees.

(a) The Department shall establish and collect asbestos containing material management accreditation and annual renewal fees to support the asbestos hazard management program. The fees shall not exceed one hundred dollars (\$100.00) per accreditation category, except that the fee for the abatement worker category shall not exceed twenty-five dollars (\$25.00). A person who is accredited in more than one category shall pay a fee for each category.

(b) The Department shall establish and collect fees for approving asbestos management training courses and fees for renewing course approval annually to support the asbestos hazard management program. The fees for approving a training course shall not exceed one thousand five hundred dollars (\$1,500) for each course. The annual renewal fees shall not exceed five hundred dollars (\$500.00) for each course. Each category of a training course shall be subject to a separate fee for its initial approval and a separate fee for its annual renewal."

Sec. 5. G.S. 130A-451 reads as rewritten:

"§ 130A-451. Commission to adopt rules.

For the protection of the public health, the Commission shall adopt rules to implement this ~~Article and AHERA~~ Article, AHERA, and the asbestos NESHAP for renovations and demolitions."

Sec. 6. G.S. 143-215.107(a)(5) reads as rewritten:

"(5) To develop and adopt ~~such~~ emission control standards as in the judgment of the Commission may be necessary to prohibit, ~~abate~~ abate, or control air pollution commensurate with established air quality standards. ~~Such~~ The standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission. This subdivision does not apply to asbestos NESHAP for renovations and demolitions, defined in G.S. 130A-444, that are subject to regulation by the Commission for Health Services under Article 19 of Chapter 130A of the General Statutes."

Sec. 7. Article 19 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-452. Local air pollution programs.

(a) The Department may authorize any local air pollution program to enforce the asbestos NESHAP for renovations and demolitions if that program is certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112. The Department shall authorize any local air pollution program to enforce the asbestos NESHAP for renovations and demolitions if the local air pollution program was certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local air pollution program shall continue to be authorized by the Department to enforce the asbestos NESHAP for renovations and demolitions so long as the program maintains its certification under G.S. 143-215.112 and complies with any rules adopted by the Commission pursuant to subsection (b) of this section.

(b) The Commission shall adopt rules regarding the authorization of local air pollution programs to enforce the asbestos NESHAP for renovations and demolitions."

**Sec. 8.** This act becomes effective October 1, 1994, and applies to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1049

## CHAPTER 687

AN ACT TO AMEND THE LAW CONCERNING ASSAULTS ON GOVERNMENTAL OFFICERS AND EMPLOYEES TO INCLUDE COMPANY POLICE OFFICERS AND CAMPUS POLICE OFFICERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 14-33(b) reads as rewritten:

"(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

- (1) Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon; or
- (2) Assaults a female, he being a male person at least 18 years of age; or
- (3) Assaults a child under the age of 12 years; or
- (4) to (7). Repealed by Session Laws 1991, c. 525, s. 1.
- (8) Assaults an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, when the officer or employee is discharging or attempting to discharge his official duties."

**Sec. 2.** G.S. 14-34.2 reads as rewritten:

"§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or ~~employees~~ employees, company police officers, or campus police officers.

Any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

**Sec. 3.** This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 6th day of July, 1994.



H.B. 988

## CHAPTER 688

AN ACT TO AMEND THE LICENSURE ACT FOR SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS TO EXEMPT CERTAIN ASSISTANT PERSONNEL FROM THE LICENSURE REQUIREMENT IF THEY ARE REGISTERED WITH THE BOARD BY THEIR EMPLOYER.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 90-294(b) reads as rewritten:

"(b) No person may practice or hold himself or herself out as being able to practice speech and language pathology or audiology in this State unless ~~such the~~ person holds a current, unsuspended, unrevoked license issued by the Board ~~as provided in this Article, or is registered with the Board as an assistant.~~ The license required by this section shall be kept conspicuously posted in ~~such the~~ person's office or place of business at all times. Nothing in this Article, however, shall be construed to prevent a qualified person licensed in this State under any other law from engaging in the profession or occupation for which such person is licensed."

**Sec. 2.** Article 22 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-298.1. Registered assistant.

A licensed speech and language pathologist or a licensed audiologist may register with the Board an assistant who works under the licensee's supervision if all of the following requirements are met:

- (1) The assistant meets the qualifications for registered assistants adopted by the Board.
- (2) The licensee who supervises the assistant pays the registration fee set by the Board.

A registration of an assistant must be renewed annually. To renew the registration of an assistant, the licensee who supervises the assistant must submit an application for renewal and pay the renewal fee. An initial or renewal fee for registering an assistant may not exceed the renewal license fee set under G.S. 90-305."

**Sec. 3.** This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 795

## CHAPTER 689

AN ACT TO AMEND THE LAW PERTAINING TO THE PROHIBITION OF CERTAIN SOLICITATIONS BY HEALTH CARE PROVIDERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The title to Article 27 of Chapter 90 of the General Statutes is amended to read:

"ARTICLE 27.

"~~Runners~~ Referral Fees and Payment for Certain Solicitations Prohibited."

**Sec. 2.** G.S. 90-401 reads as rewritten:

**"§ 90-401. ~~Runners~~ Referral fees and payment for certain solicitations prohibited.**

A health care provider shall not financially compensate in any manner a person, firm, or corporation for recommending or securing the health care provider's employment by a patient, or as a reward for having made a recommendation resulting in the health care provider's employment by a patient. No health care provider who refers a patient of that health care provider to another health care provider shall receive financial or other compensation from the health care provider receiving the referral as a payment solely or primarily for the referral. This provision section shall not be construed to prohibit a health care provider's purchase of advertising which does not entail direct personal contact or telephone contact of a potential patient, from a bona fide mass media outlet."

**Sec. 3.** Article 27 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

**"§ 90-401.1. Direct solicitation prohibited.**

It shall be unlawful for a health care provider or the provider's employee or agent to initiate direct personal contact or telephone contact with any injured, diseased, or infirmed person, or with any other person residing in the injured, diseased, or infirmed person's household, for a period of 90 days following the injury or the onset of the disease or infirmity, if the purpose of initiating the contact, in whole or in part, is to attempt to induce or persuade the injured, diseased, or infirmed person to become a patient of the health care provider. This section shall not be construed to prohibit a health care provider's use of posted letters, brochures, or information packages to solicit injured, diseased, or infirmed persons, so long as such use does not entail direct personal contact with the person."

**Sec. 4.** G.S. 90-402 reads as rewritten:

**"§ 90-402. Sanctions.**

Violation of G.S. 90-401 the provisions of this Article shall be grounds for the offending health care provider's licensing board to suspend or revoke the health care provider's license, to refuse to renew the health care provider's license, or to take any other disciplinary action authorized by law."

**Sec. 5.** If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 6.** This act becomes effective October 1, 1994.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1661

## CHAPTER 690

AN ACT TO PERMIT THE USE OF POWELL BILL FUNDS FOR THE CONSTRUCTION OF SIDEWALKS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 136-66.1 reads as rewritten:**"§ 136-66.1. Responsibility for streets inside municipalities.**

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

- (1) The State Highway System. -- The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.
- (2) The Municipal Street System. -- In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for this system.
- (3) Maintenance of State Highway System by Municipalities. -- Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair, improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.
- (4) If the governing body of any municipality shall determine that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:
  - a. Construction of curbing and guttering;
  - b. Adding of lanes for automobile parking;
  - c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

- d. ~~Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.~~ sidewalks.
- e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality."

**Sec. 1.1.** The first paragraph of G.S. 136-41.3 reads as rewritten:

"The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and ~~highways.~~ highways, or for the planning, construction, and maintenance of sidewalks along public streets and highways."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1552

## CHAPTER 691

AN ACT TO EXTEND THE EXPIRATION DATE OF THE EXEMPTION FOR REAL ESTATE ACQUIRED BY THE DEPARTMENT OF TRANSPORTATION FROM THE REQUIREMENT THAT IT BE APPRAISED BY A LICENSED OR CERTIFIED APPRAISER WHEN THE ESTIMATED VALUE OF THE REAL ESTATE IS LESS THAN TEN THOUSAND DOLLARS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 94 of the 1991 Session Laws, as amended by Section 1 of Chapter 519 of the 1993 Session Laws, reads as rewritten:

"Sec. 2. This act is effective upon ratification and expires ~~July 1, 1994.~~ July 1, 1995."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1082

## CHAPTER 692

AN ACT TO GIVE THE BOARD OF PHARMACY AUTHORITY TO  
REGULATE MEDICAL EQUIPMENT INTENDED FOR USE IN AN  
INDIVIDUAL'S HOME.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 90-85.22 reads as rewritten:

*"§ 90-85.22. ~~Devices; registration.~~ Device and medical equipment permits.*

*(a) Devices. -- Each place where devices are dispensed shall register annually with the Board on a form provided by the Board; ~~provided this section shall not apply to places with current pharmacy permits.~~ Board and obtain a device permit. A business that has a current pharmacy permit does not have to register and obtain a device permit. Records of devices dispensed in pharmacies or other places shall be kept in accordance with ~~regulations promulgated by the Board of Pharmacy.~~ rules adopted by the Board.*

*(b) Medical Equipment. -- Each place that delivers medical equipment to the user of the equipment shall register annually with the Board on a form provided by the Board and obtain a medical equipment permit. A business that has a current pharmacy permit or a current device permit does not have to register and obtain a medical equipment permit. Medical equipment shall be delivered only in accordance with requirements established by rules adopted by the Board."*

**Sec. 2.** G.S. 90-85.3 reads as rewritten:

*"§ 90-85.3. Definitions.*

*(a) 'Administer' means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.*

*(b) 'Board' means the North Carolina Board of Pharmacy.*

*(c) 'Compounding' means taking two or more ingredients and combining them into a dosage form of a drug, exclusive of compounding by a drug manufacturer, distributor, or packer.*

*(d) 'Deliver' means the actual, constructive or attempted transfer of a ~~drug or device~~ drug, a device, or medical equipment from one person to another.*

*(e) 'Device' means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article including any component part or accessory, whose label or labeling bears the statement 'Caution: federal law requires dispensing by or on the order of a physician.' The term does not include:*

*(1) Devices used in the normal course of treating patients by health care facilities and agencies licensed under Chapter 131E or Article 2 of Chapter 122C of the General Statutes;*

*(2) Devices used or provided in the treatment of patients by medical doctors, dentists, physical therapists, occupational therapists, speech pathologists, optometrists, chiropractors, podiatrists, and*



nurses licensed under Chapter 90 of the General Statutes, provided they do not dispense devices used to administer or dispense drugs.

(f) 'Dispense' means preparing and packaging a prescription drug or device in a container and labeling the container with information required by State and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is 'dispensing'. Providing quantities of unit dose prescription drugs for subsequent administration is 'dispensing'.

(g) 'Drug' means:

- (1) Any article recognized as a drug in the United States Pharmacopeia, or in any other drug compendium or any supplement thereto, or an article recognized as a drug by the United States Food and Drug Administration;
- (2) Any article, other than food or devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
- (3) Any article, other than food or devices, intended to affect the structure or any function of the body of man or other animals; and
- (4) Any article intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection.

(h) 'Emancipated minor' means any person under the age of 18 who is or has been married or who is or has been a parent; or whose parents or guardians have surrendered their rights to the minor's services and earnings as well as their right to custody and control of the minor's person; or who has been emancipated by an appropriate court order.

(i) 'Health care provider' means any licensed health care professional; any agent or employee of any health care institution, health care insurer, health care professional school; or a member of any allied health profession.

(j) 'Label' means a display of written, printed or graphic matter upon the immediate or outside container of any drug.

(k) 'Labeling' means preparing and affixing a label to any drug container, exclusive of labeling by a manufacturer, packer or distributor of a nonprescription drug or a commercially packaged prescription drug or device.

(l) 'License' means a license to practice pharmacy including a renewal license issued by the Board.

(11) 'Medical equipment' means any of the following items that are intended for use by the consumer in the consumer's place of residence:

- (1) A device.
- (2) Ambulation assistance equipment.
- (3) Mobility equipment.
- (4) Rehabilitation seating.
- (5) Oxygen and respiratory care equipment.
- (6) Rehabilitation environmental control equipment.
- (7) Diagnostic equipment.
- (8) A bed prescribed by a physician to treat or alleviate a medical condition.

The term 'medical equipment' does not include (i) medical equipment used or dispensed in the normal course of treating patients by or on behalf of home care agencies, hospitals, and nursing facilities licensed under Chapter

131E of the General Statutes or hospitals or agencies licensed under Article 2 of Chapter 122C of the General Statutes; (ii) medical equipment used or dispensed by professionals licensed under Chapters 90 or 93D of the General Statutes, provided the professional is practicing within the scope of that professional's practice act; (iii) upper and lower extremity prosthetics and related orthotics; or (iv) canes, crutches, walkers, and bathtub grab bars.

(m) 'Permit' means a permit to operate a pharmacy ~~pharmacy~~, deliver medical equipment, or dispense devices, including a renewal license issued by the Board.

(n) 'Person' means an individual, corporation, partnership, association, unit of government, or other legal entity.

(o) 'Person *in loco parentis*' means the person who has assumed parental responsibilities for a child.

(p) 'Pharmacist' means a person licensed under this Article to practice pharmacy.

(q) 'Pharmacy' means any place where prescription drugs are dispensed or compounded.

(r) 'Practice of pharmacy' means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules and regulations adopted by each of the Boards of Pharmacy, the Board of Nursing, and the Board of Medical Examiners of the State of North Carolina. Such rules and regulations shall be designed to ensure the safety and health of the patients for whom such drugs are administered.

(s) 'Prescription drug' means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement:

'Caution: Federal law prohibits dispensing without prescription.'

(t) 'Prescription order' means a written or verbal order for a prescription drug, prescription device, or pharmaceutical service from a person authorized by law to prescribe such drug, device, or service. A prescription order includes an order entered in a chart or other medical record of a patient.

(u) 'Unit dose medication system' means a system in which each dose of medication is individually packaged in a properly sealed and properly labeled container."

Sec. 3. G.S. 90-85.24 reads as rewritten:

*"§ 90-85.24. Fees collectible by Board.*

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, one hundred fifty dollars (\$150.00) plus the cost of the test material; for renewing the license as a pharmacist, sixty-five dollars (\$65.00); for renewing the license of an assistant pharmacist, ten dollars (\$10.00); for licenses without examination as provided in G.S. 90-85.20, original, three hundred dollars (\$300.00); for original registration of a drugstore, two hundred fifty dollars (\$250.00), and renewal thereof, one hundred twenty-five dollars ~~(\$125.00)~~, (\$125.00); for registration to dispense devices, deliver medical equipment, or both, three hundred dollars (\$300.00) per year. All fees shall be paid before any applicant may be admitted to examination or ~~his name~~ the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the Board."

Sec. 4. G.S. 90-85.40 is amended by adding a new subsection to read:

"(d1) It is unlawful for a person to own or manage a place of business from which medical equipment is delivered without a permit as required by this Article."

Sec. 5. This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1827

## CHAPTER 693

AN ACT TO PROVIDE THAT THE EXEMPTION OF BEAUFORT COUNTY FROM CERTAIN PROVISIONS OF LAW RELATING TO THE APPOINTMENT OF COMMISSIONERS OF A PUBLIC HOUSING AUTHORITY SHALL NOT BE APPLICABLE TO THE CITY OF WASHINGTON AND THE WASHINGTON HOUSING AUTHORITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 157-5 reads as rewritten:

*"§ 157-5. Appointment, qualifications and tenure of commissioners.*

An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and he shall designate the first chairman. Notwithstanding G.S. 157-7, 14-234, or any other provision of law, no person shall be barred from serving as a commissioner of any housing authority created under this Chapter because such person is a tenant of the authority or a recipient of housing assistance through any program operated by the authority; provided, that no such commissioner shall be qualified to vote on matters affecting his official conduct or matters affecting his own individual tenancy, as distinguished from matters affecting tenants in general; and further provided, that no more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority. Avery, Beaufort, Bertie, Burke, Caldwell, Camden,

Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Graham, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lenoir, Macon, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Pitt, Polk, Robeson, Rowan, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson and Yadkin Counties are exempted from any provision of law allowing a person who is a tenant of the authority to serve as a commissioner of a housing ~~authority~~, authority, except that the exemption for Beaufort County shall not apply to the City of Washington and the Washington Housing Authority. The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper."

Sec. 2. This act applies to the City of Washington and the Washington Housing Authority only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1972

## CHAPTER 694

AN ACT TO CLARIFY THAT ALL DATA EXCEPT EFFLUENT OR EMISSION DATA IS ENTITLED TO PROTECTION AS A TRADE SECRET PURSUANT TO G.S. 132-1.2, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 143-215.3(a)(2) reads as rewritten:

"(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. ~~Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations, limitations or toxic, pretreatment pretreatment, or new source performance standards, standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data or information necessary to determine compliance with standards adopted pursuant to Article 21B of this Chapter) to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency, or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties."~~

Sec. 2. Part 1 of Article 21 of Chapter 143 of the General Statutes reads as rewritten:

"§ 143-215.3C. Confidential information protected."



(a) Information obtained under this Article or Article 21A or 21B of this Chapter shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission has access, if made public, would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider the information confidential.

(b) Effluent data, as defined in 40 Code of Federal Regulations § 2.302 (1 July 1993 Edition) and emission data, as defined in 40 Code of Federal Regulations § 2.301 (1 July 1993 Edition) is not entitled to confidential treatment under this section.

(c) Confidential information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter.

(d) The Commission shall provide for adequate notice to any person who submits information of any decision that the information is not entitled to confidential treatment and of any decision to release information that the person who submits the information contends is entitled to confidential treatment. Any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information may request a declaratory ruling from the Commission under G.S. 150B-4 within 10 days after the Commission notifies the person of its decision. The information may not be released by the Commission until the Commission issues a declaratory ruling or, if judicial review of the final agency decision is sought by any party, the information may not be released by the Commission until a final judicial determination has been made."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1981

## CHAPTER 695

### AN ACT TO AUTHORIZE THE TOWN OF ORIENTAL TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

*The General Assembly of North Carolina enacts:*

#### **Section 1. Occupancy Tax.**

##### **(a) Authorization and Scope.**

The Board of Commissioners of the Town of Oriental may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of not more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. If Pamlico

County is authorized to levy a room occupancy tax, the combined room occupancy tax rates for Pamlico County and any city or town located in that county may not exceed six percent (6%).

*(b) Collection.*

Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the town a discount equal to the discount the State allows the operator for State sales and use tax.

*(c) Administration.*

The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

*(d) Penalties.*

A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Commissioners of the Town of Oriental has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

*(e) Use of Tax Revenue.*

At least one-fourth of the proceeds of a tax levied under this section shall be used only to promote travel and tourism in the town. The remaining proceeds of the tax shall be used only for tourism-related expenditures.

The term "promote travel and tourism" means to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, host and conduct tours for travel industry representatives and travel writers, or engage in similar promotional activities that attract tourists or business travelers to the town; the term includes administrative expenses of the town incurred in engaging in the listed activities. The term "tourism-related expenditures" means expenditures that are designed to increase the use of lodging facilities in the town or attract

tourists or business travelers to the town and the costs of administering and collecting the tax; the term includes expenditures to construct, maintain, or repair a visitors' center, a convention facility, a museum, an historic attraction, or a publicly owned waterfront structure, but does not include other capital expenditures.

(f) *Effective Date of Levy.*

A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) *Repeal.*

A tax levied under this section may be repealed by a resolution adopted by the Board of Commissioners of the Town of Oriental. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1628

**CHAPTER 696**

AN ACT TO PROVIDE AN EXPEDITED PROCEDURE FOR CREATION OF COUNTY WATER AND SEWER DISTRICTS AFTER FAILURE OF LOW-PRESSURE PIPE SEWER SYSTEMS, TO CLARIFY THE POWERS OF COUNTY WATER AND SEWER DISTRICTS, AND CONCERNING THE APPLICATION DATES FOR CLEAN WATER BOND LOANS AND GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE AND TO GIVE WATER AND SEWER AUTHORITIES THE POWER TO ADOPT ORDINANCES TO REGULATE STORMWATER AND DRAINAGE SYSTEMS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 162A-86 is amended by adding a new subsection to read:

"(b1) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published not more than 30 nor less than 14 days before the hearing. The newspaper notice and the public hearing may cover more than one district covered by this subsection.

This subsection applies only when the local Health Director or the State Health Director has certified that there is a present or imminent serious public health hazard caused by the failure of a low-pressure pipe sewer system within the area of the proposed district, and in such case the board of commissioners may proceed either under subsection (a) of this section or under this subsection."

**Sec. 2.** G.S. 162A-87(b) reads as rewritten:

"(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

'The foregoing resolution was adopted by the . . . . . County Board of Commissioners on . . . . . and was first published on . . . . .

Any action or proceeding questioning the validity of this resolution or the creation of the . . . . . Water and Sewer District of . . . . . County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

.....  
Clerk,.....County  
Board of Commissioners'

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period.

Notwithstanding any other provision of this section, in the case of any county water and sewer districts created under G.S. 162A-86(b1):

- (1) A resolution may cover the creation of more than one district;
- (2) The board of commissioners shall cause the resolution to be published once in the newspaper in which the notice of the hearing was published; and
- (3) References in this subsection to '30 days' are instead '21 days'."

**Sec. 3.** Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-87.1A. Initial boundaries of district.

(a) The initial boundaries of a district may exclude areas contained solely within the external boundaries of the district.

(b) The initial boundaries of a district may include noncontiguous portions, as long as the closest distance from a noncontiguous piece to the part of the district containing the greatest area does not exceed one mile.

(c) This section does not invalidate any district created prior to the effective date of this section."

**Sec. 4.** G.S. 162A-87.2 reads as rewritten:

"§ 162A-87.2. *Abolition of water and sewer districts.*

(a) Upon finding that there is no longer a need for a water and sewer district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may, by resolution, abolish that district. The board of commissioners shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board of commissioners.

(b) If the:

- (1) Terms of any contract between a county water and sewer district and a city provide that upon certain conditions, all the property of the district is conveyed to that city; and
- (2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

then such contract may also provide that no earlier than such conveyance the district may be abolished by action of the governing board of the city. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a city must provide for assumption of such other indebtedness by the city. If the district is owed any assessments, then the right to collect such assessments becomes that of the city. The governing board of the city shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the governing board. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(c) If the:

- (1) Terms of any contract between a county water and sewer district and a private person provide that upon certain conditions, all the property of the district is conveyed to that private person; and
- (2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

such contract may also provide that no earlier than such conveyance the district may be abolished by action of the Utilities Commission. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a private person must provide for assumption



of such other indebtedness by the private person. If the district is owed any assessments, then the private person may collect the assessment under the same procedures as if it was the district. The Utilities Commission shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the Utilities Commission. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(d) Any resolution of abolition adopted under this section on or after the effective date of this section shall be filed with the Secretary of State."

Sec. 5. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-88.1. Contracts with private entities.

A county water and sewer district may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county water and sewer district is authorized by law to engage in."

Sec. 6. G.S. 160A-36 reads as rewritten:

"§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is ~~begun~~, begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size. An area developed for urban purposes is also the entire area of any county water and sewer district

created under G.S. 162A-86(b1), but this sentence only applies to annexation by a municipality if that:

(1) Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this sentence only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Sec. 7. G.S. 160A-48 reads as rewritten:

"§ 160A-48. *Character of area to be annexed.*

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is ~~begun~~, begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

- (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in ~~size~~ size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
- a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
  - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;  
provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.
- (d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:
- (1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or
  - (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Sec. 8. G.S. 159G-10 is amended by adding a new subsection to read:

"(a) When the State Health Director has certified that there is a present or imminent serious public health hazard on account of a failure of a low-pressure pipe sewer system, and the county water and sewer district, water and sewer authority, or county in which the failed system is located applies for funds from any or all of the High-Unit Cost Wastewater Account, the General Wastewater Revolving Loan and Grant Account, or the Emergency Wastewater Revolving Loan Account, the Environmental Management Commission may establish a special period for consideration of such applications outside the semiannual period provided by subsection (a) of this section. In such case:

- (1) The certification of the State Health Director provided for by this subsection satisfies the requirements of G.S. 150B-21.1(a)(1) for adoption of temporary rules;
- (2) The Environmental Management Commission need not adopt permanent rules;
- (3) The Environmental Management Commission, notwithstanding G.S. 150B-21.1(d) may provide that the temporary rules become effective upon adoption;
- (4) The Environmental Management Commission may establish priorities for such loans or grants, or both, notwithstanding G.S. 159G-10; and
- (5) The provisions of G.S. 159G-8(b) do not apply, unless the project is a major project in accordance with the minimum criteria rule as defined in G.S. 113A-9(6), although nothing in this subsection limits the ability of the Environmental Management Commission by temporary rule to require such environmental information as it deems appropriate.

Any temporary rules allowed by this subsection may be adopted prior to the receipt of the application for the grant or loan."

Sec. 8.1. G.S. 162A-6(14c) reads as rewritten:

- "(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the ~~authority~~, authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body."

Sec. 9. This act is effective upon ratification. Section 8 of this act expires January 1, 1995, and is only effective with respect to applications for grants and loans received on or before December 31, 1994.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 1775

## CHAPTER 697

AN ACT TO RESOLVE A CONFLICT IN THE DEALER LICENSE PLATE LAW CONCERNING THE USE OF DEALER LICENSE PLATES ON VEHICLES USED BY A DEALER IN A BUSINESS THAT IS SEPARATE FROM THE BUSINESS OF SELLING MOTOR VEHICLES, AND TO PROVIDE THAT A REGISTRATION CARD ISSUED FOR A DEALER PLATE IS NOT REQUIRED TO BE SPECIFIC FOR THAT DEALER PLATE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-79(d), as amended by Section 169.4 of Chapter 321 of the 1993 Session Laws and by Section 2 of Chapter 440 of the 1993 Session Laws, reads as rewritten:

"(d) Restrictions on Use. -- A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

- (1) Is part of the inventory of the dealer.
- (2) Is not consigned to the dealer.
- (3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
- (4) Is not used by the dealer in another business in which the dealer is engaged.
- (5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer plate displayed on the motor vehicle and any demonstration permit issued to that person while driving the motor vehicle:
  - a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.
  - b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

~~A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul~~



~~farm tractors or any other farm-related equipment sold, traded, or serviced by the dealer."~~

**Sec. 2.** G.S. 20-79(d) reads as rewritten:

"(d) Restrictions on Use. -- A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

- (1) Is part of the inventory of the dealer.
- (2) Is not consigned to the dealer.
- (3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
- (4) Is not used by the dealer in another business in which the dealer is engaged.
- (5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer ~~plate displayed on the motor vehicle~~ plates issued to the dealer and any demonstration permit issued to that person while driving the motor vehicle:
  - a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.
  - b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm-related equipment sold, traded, or serviced by the dealer."

**Sec. 3.** Section 1 of this act becomes effective July 1, 1996. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

H.B. 740

## CHAPTER 698

AN ACT TO DESIGNATE A RELATIVE OF A NURSING HOME PATIENT AND A RELATIVE OF A REST HOME PATIENT AS PUBLIC MEMBERS OF THE NURSING HOME PENALTY REVIEW COMMITTEE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 131D-34(h) reads as rewritten:

"(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

- (1) A licensed pharmacist;
- (2) A registered nurse experienced in long-term care;
- (3) A representative of a nursing home;
- (4) A representative of a domiciliary home; and
- (5) ~~A public member.~~ Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near' relative is a spouse, sibling, parent, child, grandparent, or grandchild.

Neither the pharmacist, nurse, nor public ~~member~~ members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or domiciliary home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1362

## CHAPTER 699

AN ACT TO MAKE IT UNLAWFUL TO REMOVE OR DESTROY ELECTRONIC COLLARS ON DOGS IN HAYWOOD, JACKSON, SWAIN, MACON, HENDERSON, AND TRANSYLVANIA COUNTIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** It is unlawful to intentionally remove or destroy an electronic collar or other electronic device placed on a dog by its owner to maintain control of the dog.

**Sec. 2.** A first conviction for a violation of this section is a Class 3 misdemeanor. A second or subsequent conviction for a violation of this section is a Class 2 misdemeanor.

**Sec. 3.** This act is enforceable by officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and peace officers with general subject matter jurisdiction.

**Sec. 4.** This act applies only to Haywood, Jackson, Swain, Macon, Henderson, and Transylvania Counties.

**Sec. 5.** This act becomes effective October 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1409

## CHAPTER 700

AN ACT TO REMOVE THE SUNSET ON AN ACT TO PERMIT THE COUNTY OF CABARRUS TO CONDEMN CERTAIN PROPERTY OF PRIVATE CONDEMNORS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 4 of Chapter 937 of the Session Laws of 1991 reads as rewritten:

"Sec. 4. This act is effective upon ~~ratification and expires July 1, 1995, ratification.~~"

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1465

## CHAPTER 701

AN ACT TO SHORTEN THE SEASON FOR TAKING RABBITS IN JOHNSTON COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Notwithstanding any other provision of law, there is a season for the taking of rabbits from the beginning of the season established by the Wildlife Resources Commission for the taking of rabbits through February 15 of each year.

**Sec. 2.** The Wildlife Resources Commission shall provide for bag limits during the season established in this act.

**Sec. 3.** This act applies only to Johnston County.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1623

## CHAPTER 702

## AN ACT TO CHANGE THE AUDITS OF ABC PROFITS OF THE HAMLET BOARD OF ALCOHOLIC CONTROL FROM QUARTERLY TO ANNUALLY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 6 of Chapter 982 of the Session Laws of 1963, as reenacted and amended by Chapter 612 of the Session Laws of 1971, reads as rewritten:

"Sec. 6. The profits from the stores operated under this Act shall be allocated, as determined by ~~quarterly~~ annual audits, and used as herein provided:

(a) The Hamlet Board of Alcoholic Control shall allocate from the gross profits as follows:

Two per cent (2%) of the gross profits shall be paid to the Sheriff of Richmond County to be used only as additional compensation for the Deputy Sheriffs of Richmond County.

Four per cent (4%) of the gross profits shall be paid to the governing body of the Town of Hamlet to be used for the employment and compensation of policemen in the Town of Hamlet.

(b) The Hamlet Board of Alcoholic Control shall allocate from the net profits as follows:

Thirty per cent (30%) of the net profits shall be paid to the Hamlet City School Board. The City School Board shall apply three per cent (3%) of the funds allocated to it for the use and benefit of the Monroe Avenue School Band, and three per cent (3%) for the use and benefit of the Hamlet Avenue School Band.

Forty percent (40%) of the net profits shall be paid to the governing body of the Town of Hamlet to be appropriated for any proper governmental purpose. Provided, that the governing body shall apply twenty per cent (20%) of the funds so allocated to the use and benefit of the Hamlet Recreational Commission.

Eleven per cent (11%) of the net profits shall be paid to the Richmond County Board of Education to be used for all proper school purposes, and two per cent (2%) of this money to be used for Rohanen Band and two per cent (2%) for other county schools for recreation or other needed programs, such as bands, library needs, etc.

Four per cent (4%) shall be paid to the trustees of the Hamlet Library to be used for library purposes.

Fifteen percent (15%) of the net profits shall be paid the general fund of Richmond County to be used for the Community College to be established in the county. In the event the Community College is not established within four (4) years from the date this Bill is ratified, then the funds herein allocated shall be paid into the general fund of the Town of Hamlet.

The governing body of the Town of Hamlet is hereby authorized to call a special election, upon its own motion, and shall call a special election upon receipt of a petition signed by fifteen percent (15%) of the registered voters of the town, to determine whether the net profits earned by the Town of

Hamlet Board of Alcoholic Control shall be allocated for any legal purpose and in such amounts and purposes other than as set forth in ~~Section 6 of Chapter 982 of Session Laws of 1963~~ this section. The petition shall set forth the specific changes to be voted upon at the election.

Such election upon the motion of the governing body may be called at any time as fixed by the governing body of the town and shall be called within 60 days of receipt of a proper petition. If the special election is called, the governing body shall give 30 days' public notice of the election by publication in a newspaper having general circulation in the town. The notice shall set forth the exact changes to be made in the distribution of the ABC funds and information pertaining to registration, polling places and time of election.

The ballots shall contain the issue or issues to be voted upon and shall be so arranged as to give the voters the opportunity to vote 'FOR' or 'AGAINST' the issue or issues contained thereon.

If a majority of those voting vote 'For' the proposed change, then ~~Section 6 of Chapter 982 of Session Laws of 1963~~ this section shall be so amended upon the certification of the results of the election.

Except as provided herein, the special election shall be held in accordance with the laws and regulations governing regular municipal elections in the Town of Hamlet to the extent practicable. No election shall be held under this section within two years of the last election held hereunder."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1644

## CHAPTER 703

AN ACT TO INCREASE THE TERM OF OFFICE FOR THE MAYOR OF SALEMBURG FROM TWO TO FOUR YEARS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 3.3(a) of the Charter of the Town of Salemburg, being Chapter 104 of the 1967 Session Laws, reads as rewritten:

"(a) The Mayor shall serve for a term of ~~two~~ four years, beginning the day and hour of the organizational meeting following his election, as established by ordinance in accordance with ~~this Charter~~, G.S. 160A-68; provided, he shall serve until his successor is duly elected and qualifies."

**Sec. 2.** This act becomes effective beginning with the Mayor elected in 1995.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1660

## CHAPTER 704

AN ACT TO MAKE A CHANGE IN THE FUNDING FORMULA FOR GUILFORD COUNTY SCHOOLS PROVIDED BY THE MERGER ACT.



*The General Assembly of North Carolina enacts:*

**Section 1.** Section 15 of Chapter 78 of the Session Laws of 1991 is amended by adding a new subsection to read:

"(d) Notwithstanding subsection (b) of this section, for 1994-95 the per student rate for current operating expenses may be provided in a lesser amount if requested by the Guilford County Board of Education."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1665

#### CHAPTER 705

AN ACT TO EXEMPT SURRY COUNTY FROM CERTAIN STATUTORY REQUIREMENTS IN THE CONSTRUCTION OF FACILITIES AT THE SURRY COUNTY LANDFILL.

*The General Assembly of North Carolina enacts:*

**Section 1.** The County of Surry may contract for the design and construction of a maintenance shop, repair garage, a shed for a recycling baler, and office at the Surry County Landfill without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1667

#### CHAPTER 706

AN ACT AUTHORIZING UNION AND COLUMBUS COUNTIES TO ESTABLISH A TOURISM BOARD FOR THE PROMOTION OF TRAVEL AND TOURISM WITHIN THE COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** A county Board of Commissioners may by resolution establish a tourism board to promote travel and tourism within the County. The board shall be created pursuant to G.S. 158-8, except that the membership, duration of service, powers, and duties of the board shall be fixed by resolution of the Board of Commissioners. The resolution establishing a tourism board may be modified, amended, or repealed in the same manner as it was originally adopted. G.S. 158-7.1 and G.S. 158-12 authorize the County Board of Commissioners to appropriate funds not otherwise limited as to use by law for the purpose of promoting travel and tourism within the County.

**Sec. 2.** This act applies only to Columbus and Union Counties.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1668

## CHAPTER 707

AN ACT TO PROHIBIT HUNTING AND DISCHARGING FIREARMS  
FROM PUBLIC ROADS AND HIGHWAYS IN UNION COUNTY.*The General Assembly of North Carolina enacts:*

**Section 1.** It is unlawful to hunt, take, or kill wild animals or wild birds at any time from, on, or across the right-of-way of any public road or highway.

**Sec. 2.** It is unlawful to discharge a firearm from, on, or across the right-of-way of any State-maintained road.

**Sec. 3.** For purposes of this act, the term "firearm" means any weapon or similar instrument from which shot, bullets, or similar projectiles are discharged by means of the ignition of gunpowder.

**Sec. 4.** A violation of this act is a Class 3 misdemeanor.

**Sec. 5.** This act is enforceable by officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

**Sec. 6.** This act shall not apply to the use of firearms:

- (1) By law enforcement officers or members of the armed forces in the line of duty;
- (2) In defense of person or property; or
- (3) Pursuant to lawful directions of law enforcement officers.

**Sec. 7.** This act applies only to Union County.

**Sec. 8.** This act becomes effective October 1, 1994.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1670

## CHAPTER 708

AN ACT TO DELETE THE CITY RESIDENCY REQUIREMENT FOR  
MEMBERS OF THE CIVIL SERVICE BOARD OF THE CITY OF  
CHARLOTTE.*The General Assembly of North Carolina enacts:*

**Section 1.** Section 4.61(1) of the Charter of the City of Charlotte, being Chapter 713 of the Session Laws of 1965, as rewritten by Chapter 449 of the Session Laws of 1979, reads as rewritten:

- "(1) The members of the Civil Service Board shall be electors of the City of Charlotte ~~and or County of Mecklenburg and~~ shall take an oath to faithfully perform their duties. The members of said Board shall be subject to removal from office by a two-thirds vote of the City Council, with or without cause."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1671

## CHAPTER 709

AN ACT TO ALLOW THE COUNTY OF MECKLENBURG TO WAIVE  
BID BONDS ON PUBLIC CONTRACTS.*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 143-129 as it applies to the County of Mecklenburg is amended to provide that the County Manager or his designee may waive the requirement for a bid bond or deposit for the purchase of apparatus, supplies, material, or equipment where the successful bidder does not have any past experience of nonperformance with the County. The Board of County Commissioners may consider a bid for the purchase of apparatus, supplies, materials, or equipment and award a contract on such bid notwithstanding the fact that the proposal is not accompanied by a bid deposit with the Board of County Commissioners.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1675

## CHAPTER 710

AN ACT TO MODIFY THE DISTRIBUTION OF THE PROFITS FROM  
THE ALCOHOLIC BEVERAGE CONTROL SYSTEM IN THE TOWN  
OF NORWOOD.*The General Assembly of North Carolina enacts:*

**Section 1.** Section 5 of Chapter 722 of the 1965 Session Laws as amended by Chapter 120 of the 1975 Session Laws reads as rewritten:

"Sec. 5. The Board of Alcoholic Control shall pay, quarterly, to the Town of Norwood not less than five percent (5%) and not more than fifteen percent (15%) of the gross profits from the sale of alcoholic beverages, and the Town of Norwood shall expend such funds for law enforcement purposes. Out of net revenue, up to five ~~per cent~~ percent (5%) may be expended for Alcoholic Education as to the effects of the use of Alcoholic Beverages. Out of the net revenue remaining after the payment of all costs and operating expenses and after retaining a sufficient working capital, the Town of Norwood Board of Alcohol Control shall on a quarterly basis pay ~~fifty per cent (50%)~~ eighty-five percent (85%) of the net revenue to the general fund of the Town of ~~Norwood~~, Norwood, of which ~~thirty-five percent (35%)~~ shall be used for Economic Development, and ~~fifty per cent (50%)~~ fifteen percent (15%) of the net revenue to the general fund of Stanly County; ~~provided, if Alcohol Control Stores are established in the City of Albemarle then net proceeds shall be divided as follows: The Town of Norwood Board of Alcohol shall on a quarterly basis pay over eighty five per cent (85%) of said net revenue to the general fund of the Town of Norwood and fifteen per cent (15%) of the net revenue to the general fund of Stanly County.~~"

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1681

## CHAPTER 711

AN ACT TO ALLOW THE GOLDSBORO-WAYNE AIRPORT AUTHORITY TO LEASE PROPERTY TO THE CITY OF GOLDSBORO, WAYNE COUNTY, OR WAYNE COMMUNITY COLLEGE UNDER GENERAL LAW.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 8(c) of Chapter 927, Session Laws of 1963, as amended by Section 1 of Chapter 1006, Session Laws of 1987, reads as rewritten:

"(c) To lease (without joinder in the lease agreements of the owning municipalities, to wit, the County of Wayne and the City of Goldsboro) for a term not to exceed 20 years, and for purposes not inconsistent with the grants and agreements under which the said Airport is held by said owning municipalities, real or personal property under the supervision of or administered by the said ~~Authority~~. Authority; provided that in the case of leases to the City of Goldsboro, Wayne County, or Wayne Community College, the provisions of G.S. 160A-274, rather than this subsection, shall apply."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1684

## CHAPTER 712

AN ACT TO AUTHORIZE THE MECKLENBURG COUNTY MANAGER AND THE CHARLOTTE CITY MANAGER TO AWARD CONTRACTS FOR THE PURPOSE OF PURCHASING APPARATUS, SUPPLIES, MATERIALS, OR EQUIPMENT REGARDLESS OF THE AMOUNT, AND FOR CONSTRUCTION PROJECTS UNDER A CERTAIN AMOUNT, PROVIDED THERE ARE SUFFICIENT APPROPRIATED UNENCUMBERED FUNDS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 143-129 is amended by adding the following at the end:

"A county manager may award, approve, and execute contracts for the county for the purchase of apparatus, supplies, materials, or equipment regardless of the value of the contract, or for construction contracts where the estimated cost of the construction project does not exceed fifty thousand dollars (\$50,000), provided that:

- (1) The county manager shall report to the Board of County Commissioners prior to executing any contract in excess of \$50,000 for the purchase of apparatus, supplies, materials, or equipment upon which bids were received;

- (2) The county has approved a sufficient unencumbered appropriation in the annual budget for the current fiscal year for the general purpose specified in the contract or agreement; and
- (3) The contracts are not entered into as a result of requests for proposals."

**Sec. 2.** Section 9.82 of the Charter of the City of Charlotte, being Chapter 713, Session Laws of 1965, as amended by Chapters 133 and 333, Session Laws of 1969 and Chapter 481, Session Laws of 1973, rewritten by Chapter 391, Session Laws of 1979, and amended by Chapter 1140, Session Laws of 1981, Chapter 343, Session Laws of 1985, and Chapter 170, Session Laws of 1989, reads as rewritten:

"Sec. 9.82. *Award and approval of certain contracts.* The city manager or his duly authorized designee is hereby authorized to award, approve, and execute contracts or agreements of any kind or nature on behalf of the city when the amount of such contract or agreement does not exceed fifty thousand dollars (\$50,000); provided that the city council shall have approved a sufficient appropriation in the annual budget for the current fiscal year for the general purpose specified in the contract or agreement. In addition, the City Manager or his duly authorized designee is authorized to approve and execute amendments to contracts or agreements, including contracts initially approved by the City Council, when the amount in question does not exceed fifty thousand dollars (\$50,000). Furthermore, the City Manager or his duly authorized designee is authorized to award, approve, and execute contracts for the construction and installation of water and sewer lines that will eventually become a part of the City utility system, regardless of the amount, where the construction and installation is the sole responsibility and is at the sole expense of another person, firm, or corporation.

Furthermore, the City Manager may award, approve, and execute contracts for the purchase of apparatus, supplies, materials, or equipment regardless of the value of the contract, provided that:

- (1) The City Manager shall report to the City Council prior to executing any contracts upon which bids are received;
- (2) The City Council shall have approved a sufficient unencumbered appropriation in the annual budget for the current fiscal year for the general purpose specified in the contract;
- (3) The contract is not a construction contract; and
- (4) The contracts are not entered into as a result of requests for proposals."

**Sec. 3.** Section 1 of this act applies to Mecklenburg County only.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

H.B. 1993

## CHAPTER 713

AN ACT TO AUTHORIZE THE CITY OF WASHINGTON TO NEGOTIATE AND ENTER INTO A LONG-TERM CONTRACT FOR MUNICIPAL SERVICES AND TO ANNEX CERTAIN PROPERTY



INTO THAT CITY, TO ALLOW THE TOWN OF STANLEY TO NEGOTIATE ANNEXATION CONTRACTS AND TO ANNEX CERTAIN PROPERTY INTO THAT TOWN, AND TO SET THE FILING PERIOD FOR CANDIDATES FOR THE BEAUFORT COUNTY BOARD OF EDUCATION.

*The General Assembly of North Carolina enacts:*

**Section 1.** (a) Notwithstanding any applicable provision of the General Statutes or other public or local law, the City of Washington is granted certain contract powers as follows:

- (1) The City of Washington may negotiate, enter into, and by contract provide on a long-term basis, services to National Spinning Company to be provided according to the terms and conditions of such contract.
- (2) The City of Washington may accept from National Spinning Company, as consideration for such contract, the payment of certain fees, the payment of capital expense reimbursements, the granting of pipeline easements, and the annexation of certain property.
- (3) Any contract entered into as provided above is deemed by this section to be proprietary and commercial in nature and is specifically determined to be consistent with the public policy of the State of North Carolina.
- (4) Any contract entered into as provided above is a continuing contract and is binding on and enforceable against the current and future members of the City Council of the City of Washington during the full term of such contract and any extension thereof.
- (5) The parties to any contract entered into as provided above are authorized by this section to modify, amend, and extend such contract on mutual written consent, without the approval of the General Assembly.
- (b) This section legislatively annexes certain property into the City of Washington according to the following:
  - (1) On the date of the full, complete, and properly authorized execution by both parties of the contract authorized in subsection (a) of this section, then, and only then, shall the following described property be annexed into the municipal boundaries of the City of Washington, to be effective on that same date or on such later date as may be specified by the City of Washington at the time of execution of the contract:

Beginning at an iron pipe in the present Washington City Limits on the northern edge of Kennedy's Creek said point being also in the dividing line between the land of National Spinning Company and the City of Washington; thence with the said dividing line and the present City Limits, N 39°-52'E - 755.8 feet, S 50°-08'E - 270.0 feet and N 39°-52'E - 470.0 feet and the same course continued 60.0 feet to the northern right-of-way line of West Second Street; thence with the edge of said street, N. 50°-59'W - 779.4 feet to the northern boundary line of National

Spinning Company; thence with said line N 1°-14'E - 548.1 feet to a ditch, Lee Knott's line; thence leaving present City Limits N 81°-08'W - 626.0 feet to an iron pipe, said pipe also being Lee Knott's corner, also being City of Washington's corner; thence leaving said iron pipe and following the eastern most shoreline of the East prong of Kennedy's Creek for a meandering distance of 3035 feet to point of beginning.

- (2) Except as modified by this section and the contract authorized in subsection (a) of this section, on the effective date of annexation, any applicable sections of Article 4A of Chapter 160A of the General Statutes shall apply to this annexation.
- (3) Should the contract authorized in subsection (a) of this section not be executed, nothing in this section modifies the application of Article 4A of Chapter 160A of the General Statutes to the property described in subdivision (1) of this subsection.
- (4) Nothing in this section impairs the right of the General Assembly to annex or deannex the above-described property by specific local act.

**Sec. 2.** (a) The Town of Stanley may, by contract, provide that certain property described in the contract may not be annexed by the Town under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to June 30, 1999. Nothing in this section impairs the right of the General Assembly to annex the property by specific local act.

(b) The Town of Stanley may accept, as consideration for the contract, "Payments in lieu of taxes".

(c) Payments in lieu of taxes under this section shall be annually paid by the owner of property subject to a contract under subsection (a) of this section in the amount and at the times stated in the contract.

(d) A contract under subsection (a) of this section applies only to the following described property:

Queens Group, Inc.

BEGINNING at an iron pin in the northerly RW of North Carolina #27 (60.0 feet in width), said point of beginning being located 3,725.81 feet from the westerly RW of Eslynn Road and runs thence from said P.O.B. S. 33 deg. 50 min. 17 sec. W. a distance of 30.0 feet to a nail in the center line of paving of N.C. Highway #27; thence with the center line of paving N. 56 deg. 09 min. 43 sec. W. a distance of 1,001.36 feet to a nail; thence with the center of paving and with the arc of a circular curve, having a radius of 10,208.46 to the right and in a northwesterly direction an arc distance of 959.35 feet to a nail; thence a new line N. 33 deg. 50 min. 17 sec. E., a distance of 331.55 feet to an iron pin set in the line of Craig Realty & Development Company, Deed Book 1264, Page 234, and Deed Book 692, Page 255; thence with said Craig's southerly line S. 75 deg. 14 min. 46 sec. E., a distance of 2,057.64 feet to a planted stone; thence S. 73 deg. 40 min. 44 sec. E., a distance of 15.47 feet to an iron pin set; thence a new line S. 33 deg. 50 min. 17 sec. W., a distance of 1,024.01 feet to the point of BEGINNING.

(e) This section legislatively annexes the property described in subsection (d) of this section into the Town of Stanley according to the following:

- (1) On execution by both parties of a contract authorized in subsection (a) of this section, then, and only then, the property shall be annexed into the municipal boundaries of the Town of Stanley, to be effective on June 30, 1999.
- (2) On the effective date of annexation, all applicable sections of Article 4A of Chapter 160A of the General Statutes shall apply to this annexation.
- (3) Should a contract authorized in subsection (a) of this section not be executed, nothing in this section modifies the application of Article 4A of Chapter 160A of the General Statutes to the property described in subsection (d) of this section.
- (4) Nothing in this section impairs the right of the General Assembly to annex or deannex the above-described property by specific local act.
- (f) The Town of Stanley may expend nontax revenue received under this section in the same fashion and for the same public purposes as tax revenue in the Town's general fund.

**Sec. 3.** Section 5(b) of Chapter 55 of the 1993 Session Laws reads as rewritten:

"(b) The members of the Permanent Board shall be elected for a term of four years in nonpartisan plurality elections held at the time of the general election for county offices. The filing period for candidates shall be the same as specified in G.S. 163-294.2(c) for nonpartisan plurality elections. Duly elected members of the Permanent Board shall take office the first Monday of December immediately following their election and shall take the oath of office prescribed in Article VI, Section 7 of the Constitution."

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1471

## CHAPTER 714

AN ACT TO PROVIDE AN EXPEDITED PROCEDURE FOR CREATION OF COUNTY WATER AND SEWER DISTRICTS AFTER FAILURE OF LOW-PRESSURE PIPE SEWER SYSTEMS, TO CLARIFY THE POWERS OF COUNTY WATER AND SEWER DISTRICTS, AND CONCERNING THE APPLICATION DATES FOR CLEAN WATER BOND LOANS AND GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 162A-86 is amended by adding a new subsection to read:

"(b1) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and

place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published not more than 30 nor less than 14 days before the hearing. The newspaper notice and the public hearing may cover more than one district covered by this subsection.

This subsection applies only when the local Health Director or the State Health Director has certified that there is a present or imminent serious public health hazard caused by the failure of a low-pressure pipe sewer system within the area of the proposed district, and in such case the board of commissioners may proceed either under subsection (a) of this section or under this subsection."

Sec. 2. G.S. 162A-87(b) reads as rewritten:

"(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

'The foregoing resolution was adopted by the . . . . . County Board of Commissioners on . . . . . and was first published on . . . . .

Any action or proceeding questioning the validity of this resolution or the creation of the . . . . . Water and Sewer District of . . . . . County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

.....  
Clerk,.....County  
Board of Commissioners'

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period.

Notwithstanding any other provision of this section, in the case of any county water and sewer districts created under G.S. 162A-86(b1):

- (1) A resolution may cover the creation of more than one district;
- (2) The board of commissioners shall cause the resolution to be published once in the newspaper in which the notice of the hearing was published; and
- (3) References in this subsection to '30 days' are instead '21 days'."

Sec. 3. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-87.1A. Initial boundaries of district.

(a) The initial boundaries of a district may exclude areas contained solely within the external boundaries of the district.

(b) The initial boundaries of a district may include noncontiguous portions, as long as the closest distance from a noncontiguous piece to the part of the district containing the greatest area does not exceed one mile.

(c) This section does not invalidate any district created prior to the effective date of this section."

Sec. 4. G.S. 162A-87.2 reads as rewritten:

"§ 162A-87.2. Abolition of water and sewer districts.

(a) Upon finding that there is no longer a need for a water and sewer district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may, by resolution, abolish that district. The board of commissioners shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board of commissioners.

(b) If the:

(1) Terms of any contract between a county water and sewer district and a city provide that upon certain conditions, all the property of the district is conveyed to that city; and

(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

then such contract may also provide that no earlier than such conveyance the district may be abolished by action of the governing board of the city. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a city must provide for assumption of such other indebtedness by the city. If the district is owed any assessments, then the right to collect such assessments becomes that of the city. The governing board of the city shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the governing board. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(c) If the:

(1) Terms of any contract between a county water and sewer district and a private person provide that upon certain conditions, all the property of the district is conveyed to that private person; and



- (2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

such contract may also provide that no earlier than such conveyance the district may be abolished by action of the Utilities Commission. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a private person must provide for assumption of such other indebtedness by the private person. If the district is owed any assessments, then the private person may collect the assessment under the same procedures as if it was the district. The Utilities Commission shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the Utilities Commission. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(d) Any resolution of abolition adopted under this section on or after the effective date of this section shall be filed with the Secretary of State."

Sec. 5. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-88.1. Contracts with private entities.

A county water and sewer district may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county water and sewer district is authorized by law to engage in."

Sec. 6. G.S. 160A-36 reads as rewritten:

"§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is ~~begun~~, begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential,

commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size. An area developed for urban purposes is also the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this sentence only applies to annexation by a municipality if that:

- (1) Municipality has provided in a contract with that district that the area is developed for urban purposes; and
- (2) Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this sentence only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Sec. 7. G.S. 160A-48 reads as rewritten:

"§ 160A-48. *Character of area to be annexed.*

(a) A municipal governing board may extend the municipal corporate limits to include any area

- (1) Which meets the general standards of subsection (b), and
- (2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is ~~begun~~, begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in ~~size~~, size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
  - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
  - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;  
provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.
- (d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:
  - (1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or
  - (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Sec. 8. G.S. 159G-10 is amended by adding a new subsection to read:

"(a) When the State Health Director has certified that there is a present or imminent serious public health hazard on account of a failure of a low-pressure pipe sewer system, and the county water and sewer district, water and sewer authority, or county in which the failed system is located applies for funds from any or all of the High-Unit Cost Wastewater Account, the General Wastewater Revolving Loan and Grant Account, or the Emergency Wastewater Revolving Loan Account, the Environmental Management Commission may establish a special period for consideration of such applications outside the semiannual period provided by subsection (a) of this section. In such case:

- (1) The certification of the State Health Director provided for by this subsection satisfies the requirements of G.S. 150B-21.1(a)(1) for adoption of temporary rules;
- (2) The Environmental Management Commission need not adopt permanent rules;
- (3) The Environmental Management Commission, notwithstanding G.S. 150B-21.1(d) may provide that the temporary rules become effective upon adoption;
- (4) The Environmental Management Commission may establish priorities for such loans or grants, or both, notwithstanding G.S. 159G-10; and
- (5) The provisions of G.S. 159G-8(b) do not apply, unless the project is a major project in accordance with the minimum criteria rule as defined in G.S. 113A-9(6), although nothing in this subsection limits the ability of the Environmental Management Commission by temporary rule to require such environmental information as it deems appropriate.

Any temporary rules allowed by this subsection may be adopted prior to the receipt of the application for the grant or loan."

Sec. 9. This act is effective upon ratification. Section 8 of this act expires January 1, 1995, and is only effective with respect to applications for grants and loans received on or before December 31, 1994.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

H.B. 613

## CHAPTER 715

AN ACT TO ALLOW HEALTH CARE FACILITIES TO FURNISH PUBLIC HEALTH AUTHORITIES WITH PATIENT RECORDS UNDER CERTAIN CIRCUMSTANCES.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 130A-5(2) reads as rewritten:

"(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public ~~health~~ health; to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary ~~by joint agreement of the attending physician and a Department physician~~ by joint agreement of a Department physician and the patient's attending physician for investigating a disease or health hazard that may present a clear danger to the public health. Records shall be identified as necessary by joint agreement of a Department physician and the patient's attending physician. However, if the Department is unable to contact the attending physician after reasonable attempts to do so, or if the Department determines that contacting all attending physicians of patients involved in an investigation would be impractical or would unreasonably delay the inquiry and thereby endanger the public health, the records shall be identified as necessary by joint agreement of a Department physician and the health care facility's chief of staff. For a facility with no chief of staff, the facility's chief administrator may consent to the Department's review of the records. Any physician person, authorized to have or handle such records, providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion of privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 854

## CHAPTER 716

### AN ACT TO PERMIT THE ISSUANCE AND PURCHASING OF GROUP HEALTH INSURANCE COVERAGE FOR PUBLIC SCHOOL STUDENTS.

*The General Assembly of North Carolina enacts:*

Section 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-51-81. Group accident and health insurance for public school students.

(a) Notwithstanding G.S. 58-51-80, a policy of group accident, health, or accident and health insurance may be delivered or issued to a local board of education or to any of its schools, as policyholder, covering only students for amounts of insurance based upon some plan that will preclude individual selection. The premium may be paid by the board, jointly by the board and the students or any other persons on behalf of the students, or by the



students and any other persons on behalf of the students. In addition to the authority granted in G.S. 115C-47(6), any board may establish fees for the payment of premiums by or on behalf of the covered students.

(b) Entities subject to Articles 65 and 67 of this Chapter may provide their products in the same manner described in subsection (a) of this section."

Sec. 2. G.S. 115C-47 reads as rewritten:

"§ 115C-47. *Powers and duties generally.*

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- (1) To Provide an Adequate School System. -- It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.
- (2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. -- Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.
- (3) To Divide Local School Administrative Units into Attendance Areas. -- Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.
- (4) To Regulate Extracurricular Activities. -- Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.
- (5) To Fix Time of Opening and Closing Schools. -- The time of opening and closing the public schools shall be fixed pursuant to the provisions of G.S. 115C-84(e).
- (6) To Regulate Fees, Charges and Solicitations. -- Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.
- (7) To Accept and Administer Federal or Private Funds. -- Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given,

granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

- (8) To Sponsor or Conduct Educational Research. -- Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.
- (9) To Assure Accurate Attendance Records. -- When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.
- (10) To Assure Appropriate Class Size. -- It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board,

within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

- (11) To Determine the Length of the School Day, the School Month and the School Term. -- Local boards of education shall determine the length of the school day, the school month and the school term pursuant to the provisions of G.S. 115C-84(a) through (c).
- (12) *(For effective date see notes)* To Implement the Basic Education Program. -- Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.
- (12) *(For effective date see notes)* To Implement the Basic Education Program. -- Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.
- (13) To Elect a Superintendent. -- The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.
- (14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. -- It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.
- (15) To Prescribe Duties of Superintendent. -- The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).
- (16) To Remove a Superintendent, When Necessary. -- Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).
- (17) To Employ Assistant Superintendent and Supervisors. -- Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

- (18) To Make Rules Concerning the Conduct and Duties of Personnel. -- Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

- (19) To Approve the Assignment of Duties to an Assistant Principal. -- Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.
- (20) To Provide for Training of Teachers. -- Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.
- (21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302(c), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

- (22) To Provide School Food Services. -- Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.
- (23) To Purchase Equipment and Supplies. -- They shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a).
- (24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. -- Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical

- condition. The State Board of Education shall inspect each activity bus and recommend to the board whether the bus should be replaced but replacements will be determined by the local board of education. Such replacement units for activity buses shall be financed with local funds.
- (25) To Secure Liability Insurance. -- Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.
- (26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.
- (27) Repealed by Session Laws 1987, c. 571, s. 2.
- (28) To Enter Lease Purchase Contracts for Automobiles. -- Local boards may purchase automobiles by installment contracts that create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this subdivision is subject to the provisions of Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). The lease purchase contract shall provide that there be no recourse for default in payments under the contract other than return of the automobile. The taxing power of any tax levying authority is not and may not be pledged directly or indirectly to secure any moneys due the seller.
- (29) To Authorize the Observance of a Moment of Silence. -- Local boards of education may adopt policies to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.
- (30) To Appoint Advisory Councils. -- Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.
- (31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.



- (32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. -- Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.
- (33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).
- (34) To Encourage the Business Community to Facilitate Student Achievement. -- Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the ~~number~~ number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

- (35) To produce school building improvement reports. -- Each administrative unit shall produce school building improvement reports for each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.
- (36) To purchase group accident and health insurance for students. -- Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1437

## CHAPTER 717

AN ACT TO EXTEND TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 113-206(a1) reads as rewritten:

"(a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise for shellfish cultivation, ~~the Marine Fisheries Commission, upon the recommendation of the Secretary,~~ the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor in title for the seven-year period prior to registration of the claim, ~~the Marine Fisheries Commission, upon recommendation of the Secretary,~~ the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed."

**Sec. 2.** G.S. 113-206(e) reads as rewritten:

"(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after ~~31 December 1997,~~ December 31, 2001."

**Sec. 3.** G.S. 113-206(f) reads as rewritten:

"(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by ~~31 December 1994,~~ December 31, 1998. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:

- (1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;
- (2) The cost of resolving these claims;
- (3) The number of unresolved claims; and
- (4) Payments made to acquire claims by condemnation."

**Sec. 4.** G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~December 31, 1994, December 31, 1998,~~ to qualify for the credit allowed by this section."

**Sec. 5.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

H.B. 834

## CHAPTER 718

### AN ACT TO AUTHORIZE THE EXPENDITURE OF FUNDS FOR TEACHER ACADEMY PROGRAMS IN JULY OF 1994.

*The General Assembly of North Carolina enacts:*

**Section 1.** The State Board of Education shall allocate funds appropriated to State Aid to Local School Administrative Units for the 1994-95 fiscal year to operate the Teacher Academy Program in July of 1994.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1072

## CHAPTER 719

### AN ACT TO ALLOW STATE EMERGENCY MANAGEMENT VEHICLES TO BE EQUIPPED WITH RED LIGHTS AND SIRENS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-130.1(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section do not apply to the following:

- (1) A police car;
- (2) A highway patrol car;
- (3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
- (4) An ambulance;
- (5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation;
- (6) A fire-fighting vehicle;
- (7) A school bus;
- (8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;

- (9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
- (10) A vehicle operated by medical doctors or anesthetists in emergencies;
- (11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
- (11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;
- (12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;
- (13) Any lights that may be prescribed by the Interstate Commerce Commission;
- (14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation; **and**
- (15) A vehicle operated by an emergency medical service as an emergency support ~~vehicle~~ vehicle; **and**
- (16) A State emergency management vehicle."

**Sec. 2.** G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while

actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

S.B. 1719

## CHAPTER 720

AN ACT TO MAKE TECHNICAL CHANGES IN G.S. 58-57-100 TO FURTHER DEFINE AUTOMOBILE PHYSICAL DAMAGE INSURANCE AND TO MAKE A CONFORMING CHANGE.

*The General Assembly of North Carolina enacts:*

**Section 1.** The catch line and subsection (a) of G.S. 58-57-100 read as rewritten:

"§ 58-57-100. Automobile Credit property insurance; automobile physical damage insurance.

(a) Single interest or dual interest physical damage insurance may be written on nonfleet private passenger motor vehicles, as defined in G.S. 58-40-10, that are used as collateral for loans made under Article 15 of Chapter 53 of the General Statutes, Statutes. Automobile physical damage insurance as described in this section is a form of credit property insurance, as referred to in G.S. 53-189. It is subject to the following conditions:

- (1) Such insurance may be written only on a motor vehicle on which there is a valid inspection sticker.



- (2) If a motor vehicle is already insured and the lender is named loss payee and that insurance continues in force, then no other physical damage insurance may be written.
- (3) Notification must be given orally and in writing to the borrower that he has the option to provide his own insurance coverage at any point during the term of the loan.
- (4) The creditor must have either a first or second lien on the motor vehicle to be insured.
- (5) The amount of insurance coverage may not exceed the lesser of (i) the principal amount of the loan plus allowable charges, excluding interest, plus two scheduled installment payments or (ii) the actual fair market value of the collateral at the time the insurance is written.
- (6) When a creditor accepts other collateral in addition to a motor vehicle as herein defined, the combined insurance on all collateral may not exceed the initial indebtedness of the loan."

Sec. 2. The catch line of G.S. 58-57-90 reads as rewritten:

"§ 58-57-90. Credit property ~~insurance~~ insurance; personal household property coverage."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

H.B. 1565

## CHAPTER 721

AN ACT TO EXEMPT BLADEN COUNTY FROM THE REQUIREMENTS OF ARTICLE 12 OF CHAPTER 160A OF THE GENERAL STATUTES AS TO THE SALE OR LEASE OF CERTAIN PROPERTY AND TO EXEMPT PHYSICIANS SERVING ON THE BOARD OF DIRECTORS OF A PUBLIC HOSPITAL IN BLADEN COUNTY FROM G.S. 14-234, WHICH PROVIDES THAT THE DIRECTOR OF A PUBLIC TRUST SHALL NOT ENTER INTO A CONTRACT WITH THE PUBLIC TRUST EXCEPT UNDER CERTAIN CIRCUMSTANCES.

*The General Assembly of North Carolina enacts:*

Section 1. The County of Bladen is exempt from all provisions, restrictions, and limitations as to methods and procedures required to effectuate leases or sales of real property and personal property provided for in G.S. 153A-176 and Article 12 of Chapter 160A of the General Statutes, in connection with any lease or sale of all or part of certain property and any buildings or improvements to be built upon the property, described as follows:

Being a portion of the original tract as recorded in Deed Book 196, Page 055, Bladen County Registry, and being all that certain tract or parcel of land shown as 2.737 acres on the map or plat entitled, "Survey for Levy V. Pait, Elizabethtown Township, Bladen County, North Carolina", dated September 15, 1988, and revised October 1992 by Walker Surveying Company, Elizabethtown, North Carolina, said map being incorporated

herein by reference for a more particular description as shown thereon, further being described as follows: Beginning at an old iron located in the Southern right of way line of McLeod Street, said iron being located in the Northeast corner of the property as conveyed to Elizabethtown Housing Associates by deed recorded in Book 268, Page 484, Bladen County Registry, and runs thence with the Southern Line of McLeod Street North 45 Degrees 21 minutes 58 seconds East 238.93 feet to an iron; thence South 28 degrees 21 minutes 37 seconds East 492.65 feet to an iron; thence South 61 degrees 38 minutes 23 seconds West 294.70 feet to an iron; thence continuing with the Eastern line of the property as conveyed to Elizabethtown Housing Associates by deed recorded in Deed Book 268, Page 484 North 19 degrees 38 minutes 02 seconds West 430.69 feet to an iron, the point and place of beginning, containing 2.737 acres.

**Sec. 2.** Section 1 of this act is effective with respect to a sale or lease only if the sale or lease is given prior approval by a resolution of the Bladen County Board of Commissioners setting forth the terms of and authorizing the sale or lease. The sale or lease may be for cash or deferred payments secured by a purchase money deed of trust or for other consideration. The sale or lease effected under the authority of this act may be negotiated and consummated without further formality other than the resolution by the Bladen County Board of Commissioners.

**Sec. 3.** G.S. 14-234 shall not apply to a physician on the board of directors of a public hospital if:

- (1) The undertaking or contract between the hospital and the physician is approved by resolution of the board of directors of the public hospital; and
- (2) The resolution is adopted in a regular, open, and public meeting of the Bladen County Commissioners, and is recorded in its minutes; and
- (3) The physician entering into the contract or undertaking with the public hospital does not participate in his or her official capacity as a member of the board of directors of the public hospital in any way in the negotiation of the undertaking or contract or in the consideration of or action upon the authorizing resolution.

**Sec. 4.** This act is effective upon ratification and applies only to Bladen County.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

H.B. 1973

## CHAPTER 722

AN ACT TO PROVIDE STANDARDS FOR USE BY LOCAL GOVERNMENTS IN THE REVIEW OF APPLICATIONS FOR PERMITS OR FOR SUBSTANTIAL AMENDMENTS TO PERMITS FOR SANITARY LANDFILLS IN ORDER TO ENSURE THAT LOCAL GOVERNMENT REVIEW OF PERMIT APPLICATIONS MEETS CONSTITUTIONAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 130A-294(a)(4) reads as rewritten:

"(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. ~~No The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit shall be granted for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for the sanitary landfill for which the application the new permit, renewal of the permit, or substantial amendment to the permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in, except as provided in subdivisions (3) and (4) of subsection (b1) of this section.~~ No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

b. The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;"

**Sec. 2.** G.S. 130A-294(b1) reads as rewritten:

"(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a 'substantial amendment' means either:

- a. An increase of ten percent (10%) or more in:
    1. The population of the geographic area to be served by the sanitary landfill;
    2. The quantity of solid waste to be disposed of in the sanitary landfill; or
    3. The geographic area to be served by the sanitary landfill.
  - b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.
- (2) Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk. Prior to the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing when sufficient public interest exists. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide adequate notice to the public of the public hearing and shall specify the procedure to be followed at the public hearing.
- (3) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government shall adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319 prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill. A franchise granted for a sanitary landfill shall include:
- a. A statement of the population to be served, including a description of the geographic area.

- b. A description of the volume and characteristics of the waste stream.
  - c. A projection on the useful life of the landfill.
- (4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill



as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

**Sec. 3.** This act is effective upon ratification and applies to applications submitted on or after the effective date.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

H.B. 358

## CHAPTER 723

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE CHILD FATALITY TASK FORCE TO ENCOURAGE PROSECUTORIAL CHILD PROTECTION INITIATIVES AND TO CLARIFY THAT JUDICIAL OFFICIALS MAY SET CERTAIN CONDITIONS FOR BAIL AND PRETRIAL RELEASE FOR PERSONS ACCUSED OF SEX OFFENSES AND CRIMES OF VIOLENCE AGAINST CHILD VICTIMS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Administrative Officer of the Courts shall encourage the district attorney in each prosecutorial district to develop and disseminate information about provisions for "child friendly" courtroom environments and preparation of child witnesses and for the use of videotaped and closed circuit testimony in the courtroom.

**Sec. 2.** The North Carolina Conference of District Attorneys is encouraged to determine interest in setting up a special section for child abuse prosecutors and to set up such a section if it determines there is sufficient interest.

**Sec. 3.** The North Carolina Department of Justice and the North Carolina Conference of District Attorneys are encouraged to develop protocols and training, as follows:

- (1) For law enforcement agencies, protocols for conducting child abuse investigations;

- (2) For district attorneys, protocols for criminal prosecution of child abuse and neglect; and
- (3) For local multidisciplinary child abuse and neglect criminal investigation teams, protocols for operating policies and information sharing.

Sec. 4. The North Carolina Department of Justice and the Administrative Officer of the Courts are encouraged to develop and disseminate the following job descriptions and working procedures:

- (1) For law enforcement agencies, job descriptions, and work procedures for law enforcement officers specializing in child abuse criminal investigations; and
- (2) For district attorneys, job descriptions, and work procedures for an assistant district attorney who handles all child abuse and neglect cases.

Sec. 5. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-534.4. Sex offenses and crimes of violence against child victims: bail and pretrial release.

In all cases in which the defendant is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S.14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim, in addition to the provisions of G.S. 15A-534 a judicial official may impose the following conditions on pretrial release;

- (1) That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
- (2) That the defendant refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.
- (3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

The conditions set forth above may be imposed in addition to any other conditions that the judicial official may impose on pretrial release."

Sec. 6. Nothing in this act obligates the General Assembly to appropriate any funds to implement this act.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1994.

# PERFORM HOME INSPECTIONS FOR COMPENSATION TO BE LICENSED.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

## "ARTICLE 9F.

### "North Carolina Home Inspector Licensure Board.

#### "§ 143-151.43. Short title.

This Article is the Home Inspector Licensure Act and may be cited by that name.

#### "§ 143-151.44. Purpose.

This Article safeguards the public health, safety, and welfare and protects the public from being harmed by unqualified persons by regulating the use of the title 'Licensed Home Inspector' and by providing for the licensure and regulation of those who perform home inspections for compensation.

#### "§ 143-151.45. Definitions.

The following definitions apply in this Article:

- (1) Associate home inspector. -- An individual who is employed by a licensed home inspector to conduct a home inspection of a residential building on behalf of the licensed home inspector.
- (2) Board. -- The North Carolina Home Inspector Licensure Board.
- (3) Compensation. -- A fee or anything else of value.
- (4) Home inspection. -- A written evaluation of one or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.
- (5) Home inspector. -- An individual who engages in the business of performing home inspections for compensation.
- (6) Residential building. -- A structure intended to be, or that is in fact, used as a residence by one or more individuals.

#### "§ 143-151.46. North Carolina Home Inspector Licensure Board established; members; terms; vacancies.

(a) Membership. -- The North Carolina Home Inspector Licensure Board is established in the Department of Insurance. The Board shall be composed of the Commissioner of Insurance or the Commissioner's designee and seven additional members appointed as follows:

- (1) A public member who is not in one of the professional categories in subdivisions (2) through (4) of this subsection, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
- (2) Four home inspectors, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed by the Governor.

(3) A licensed general contractor appointed by the Governor upon the recommendation of the North Carolina Home Builders Association.

(4) A licensed real estate broker appointed by the Governor upon the recommendation of the North Carolina Association of Realtors.

All members of the Board must be citizens of the State. Appointments by the General Assembly must be made in accordance with G.S. 120-121.

(b) Terms. -- The members shall be appointed for staggered terms and the initial appointments shall be made prior to August 1, 1995. The appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified.

Of the members initially appointed, the home inspector appointed by the Governor shall serve a one-year term. The home inspector appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and the licensed real estate broker shall serve two-year terms. One home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the licensed contractor shall serve three-year terms. The remaining home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the citizen of the State shall serve four-year terms.

Thereafter, as the term of each member expires, a successor shall be appointed for a term of four years.

(c) Vacancies. -- Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the appointing official making the original appointment. Vacancies in positions appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate or the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122.

"§ 143-151.47. Compensation of Board members.

Members of the Board shall receive no salary for serving on the Board. Members may be reimbursed for their travel and other expenses in accordance with G.S. 93B-5 but may not receive the per diem authorized by that statute.

"§ 143-151.48. Election of officers; meetings of Board.

(a) Officers. -- Within 30 days after making appointments to the Board, the Governor shall call the first meeting of the Board. The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted by the Board.

(b) Meetings. -- The Board shall hold at least two regular meetings each year as provided by rules adopted by the Board. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership constitutes a quorum.

"§ 143-151.49. Powers and responsibilities of Board.

(a) General. -- The Board has the power to do all of the following:

- (1) Determine the qualifications and fitness of applicants for a new or renewed license.
- (2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.

- (3) Issue, renew, deny, revoke, and suspend licenses under this Article.
- (4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
- (5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
- (6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.
- (7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
- (8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (9) Establish fees as allowed by this Article.
- (10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
- (11) Request and receive the assistance of State educational institutions or other State agencies.
- (12) Establish continuing education requirements for persons licensed under this Article.
- (13) Adopt rules necessary to implement this Article.

(b) Exam. -- In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience.

"§ 143-151.50. License required to perform home inspections for compensation or to claim to be a 'licensed home inspector'.

(a) Requirement. -- To perform a home inspection for compensation on or after October 1, 1996, or to claim to be a licensed home inspector or a licensed associate home inspector on or after that date, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. -- The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home inspector or licensed associate home inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities.

"§ 143-151.51. Requirements to be licensed as a home inspector.

To be licensed as a home inspector, an applicant must do all of the following:

- (1) Submit a completed application to the Board upon a form provided by the Board.
- (2) Pass a licensing examination prescribed by the Board.
- (3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000).
- (4) Pay the applicable fees.
- (5) Meet one of the following three conditions:



- a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.
- b. Have education and experience the Board considers to be equivalent to that required by subpart a. of this subdivision.
- c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes.

*"§ 143-151.52. Requirements to be licensed as an associate home inspector.*

To be licensed as an associate home inspector, a person must do all of the following:

- (1) Submit a completed application to the Board upon a form provided by the Board.
- (2) Pass a licensing examination prescribed by the Board.
- (3) Pay the applicable fees.
- (4) Have a high school diploma or its equivalent.
- (5) Be affiliated or intend to be affiliated with a licensed home inspector and submit a sworn statement by the licensed home inspector with whom the applicant is or intends to be affiliated certifying that the licensed home inspector will actively supervise and train the applicant.

*"§ 143-151.53. Notification of applicant following evaluation of application.*

The Board must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The Board must send the notification of acceptance or rejection within 30 days of receiving the application. If the Board rejects an application, the notice sent to the applicant must state the reasons for the rejection.

*"§ 143-151.54. Miscellaneous license provisions.*

A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

*"§ 143-151.55. Renewal of license; inactive licenses.*

(a) Renewal. -- A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. -- The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than five years after the license expires.

(c) Inactive License. -- A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

"§ 143-151.56. Suspension, revocation, and refusal to renew license.

(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

- (1) Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.
- (2) Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.
- (3) Without having a current license, either performed home inspections for compensation or claimed to be licensed.
- (4) Engaged in conduct that could result in harm or injury to the public.
- (5) Been convicted of or pled guilty or *nolo contendere* to any crime involving moral turpitude.
- (6) Been adjudicated insane or incompetent and has not presented proof of recovery from the condition.
- (7) Engaged in any act or practice that violates any of the provisions of this Article or any rule issued by the Board, or aided, abetted, or assisted any person in a violation.

(b) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Board after a hearing held in accordance with Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year.

"§ 143-151.57. Fees.

(a) Maximum Fees. -- The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

<u>Item</u>	<u>Maximum Fee</u>
<u>Application for home inspector license</u>	<u>\$25.00</u>
<u>Application for associate home inspector license</u>	<u>15.00</u>
<u>Home inspector examination</u>	<u>75.00</u>
<u>Issuance of home inspector license</u>	<u>150.00</u>
<u>Issuance of associate home inspector license</u>	<u>100.00</u>
<u>Late renewal of home inspector license</u>	<u>25.00</u>

Late renewal of associate home inspector license  
inspector

15.00

Copies of Board rules or licensure standards

Cost of printing  
and mailing.

(b) Subsequent Application. -- An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again.

"§ 143-151.58. Duties of licensed home inspector or licensed associate home inspector.

A licensed home inspector or licensed associate home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed.

"§ 143-151.59. Violation is a misdemeanor.

A person who violates a provision of this Article is guilty of a Class 2 misdemeanor. Each unlawful act or practice constitutes a distinct and separate offense.

"§ 143-151.60. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article. Upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or a restraining order or take other appropriate action.

"§ 143-151.61. Certain applicants do not have to be licensed as an associate home inspector before being eligible for licensure as a home inspector.

The requirement that an applicant for licensure as a home inspector first have a license as an associate home inspector does not apply to a person who, prior to October 1, 1996, had been engaged in the business of performing home inspections for compensation for at least one year and had conducted at least 100 home inspections for compensation. All other requirements for licensure as a home inspector, including passing a licensing examination provided by the Board, apply to an applicant who is exempted by this section from the requirement of prior licensure as an associate home inspector.

"§ 143-151.62. Persons and practices not affected.

This Article does not apply to any of the following:

- (1) A person who is employed as a code enforcement official by the State or a political subdivision of the State and is certified pursuant to Article 9C of Chapter 143 of the General Statutes, when acting within the scope of that employment.
- (2) A plumbing or heating contractor who does not claim to be a home inspector and is licensed under Article 2 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

- (3) An electrical contractor who does not claim to be a home inspector and is licensed under Article 4 of Chapter 87 of the General Statutes, when acting pursuant to that Article.
- (4) A real estate broker or a real estate sales representative who does not claim to be a home inspector and is licensed under Article 1 of Chapter 93A of the General Statutes, when acting pursuant to that Article.
- (5) A structural pest control licensee licensed under the provisions of Article 4C of Chapter 106 of the General Statutes, an employee of the licensee, or a certified applicator licensed under the provisions of Article 4C of Chapter 106 of the General Statutes who does not claim to be a home inspector, while performing structural pest control activities pursuant to that Article.

"§ 143-151.63. Administration.

(a) The Division of Engineering and Building Code in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board. The Board shall reimburse the Division for its services to the Board.

(b) Any monies received by the Board pursuant to this Article shall be deposited in the State treasury to the account of the Board and shall be used to administer this Article.

(c) The books and records of the Board are subject to the oversight of the State Auditor, as provided in G.S. 93B-4."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1425

## CHAPTER 725

AN ACT TO EXTEND THE EXPIRATION OF THE REQUIREMENT THAT JUST COMPENSATION BE PAID FOR THE REMOVAL BY LOCAL AUTHORITIES OF BILLBOARDS ON INTERSTATE AND FEDERAL-AID PRIMARY HIGHWAYS, AS REQUIRED BY FEDERAL LAW.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 1147 of the 1981 Session Laws, as amended by Chapter 318 of the 1983 Session Laws, and by Chapter 1024 of the 1987 Session Laws, and by Section 1 of Chapter 166 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act is effective upon ratification, but shall expire ~~June 30, 1994~~ June 30, 1998, and shall have no force or effect after that date."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1473

## CHAPTER 726

## AN ACT TO ADDRESS MOTOR FUEL TAX EVASION.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-430 reads as rewritten:

"§ 105-430. *Definitions.*

The following definitions apply in this Article:

(01) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(02) Reserved.

(03) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(1) Distributor. -- A person who possesses motor fuel in this State for sale, use, or other distribution in this State or another state.

(2) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(3) Import. -- To do either of the following:

a. Bring motor fuel into this State by ~~pipeline, marine vessel, railroad tank car, or transport truck.~~ any means of conveyance other than in the fuel supply tank of a motor vehicle.

b. Exchange motor fuel located at a pipeline terminal or a seaport terminal in this State for motor fuel located inside or outside the State.

In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(4) Motor fuel. -- Any of the following:

a. All products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classification or uses.

b. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%)



distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); with the exception that the term "motor fuel" shall not include commercial solvents which distill, by American Society for Testing Materials Method D-86, not more than nine per centum (9%) at 176° F. and which have a distillation range of 125° F. or less, of liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(5) Person. -- Defined in G.S. 105-228.90.

(5a) Reserved.

(5b) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck, or another means of nonbulk transfer.

(6) Secretary. -- The Secretary of Revenue.

(7) Terminal. -- A motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(8) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(9) Transport truck. -- A semitrailer combination rig designed or used to transport loads of at least 4,200 gallons of motor fuel over the highways."

Sec. 2. Article 36 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-432.1. Application for registration as terminal operator.

A person may not engage in business in this State as a terminal operator unless the person is licensed under this Article as a distributor, is licensed under Article 36A of this Chapter as a supplier, or is registered as a terminal operator with the Secretary. To register as a terminal operator, a person must complete an application for registration provided by the Secretary and provide the information that would be required if the person filed an application for a license as a distributor.

A terminal operator must display a copy of a registration issued under this section in a conspicuous place at each place of business of the terminal operator. A terminal operator's registration is not transferable and remains in effect until surrendered or cancelled."

Sec. 3. G.S. 105-433(d) reads as rewritten:

"(d) Export Exception. -- ~~A distributor whose sale or other distribution of fuel consists only of exporting fuel~~ who meets the following restrictions is not required to be incorporated or formed in this State, authorized to transact business in this State, or have a designated agent for service of process in this State. State:

(1) The distributor's sale or other distribution of motor fuel consists only of exporting the motor fuel.

(2) The distributor is licensed for motor fuel tax purposes in each state to which the distributor exports motor fuel."

**Sec. 4.** Article 36 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-438.1. Shipping document required to transport motor fuel by railroad tank car or transport truck.

(a) Issuance. -- A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. -- A shipping document issued by a terminal operator or the operator of a bulk plant must be machine-printed and must contain the following information and any other information required by the Secretary:

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
- (2) The date the motor fuel was loaded.
- (3) The gross volume and the net volume temperature-corrected to 60° Fahrenheit of motor fuel loaded.
- (4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(c) Reliance. -- A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. -- A person to whom a shipping document was issued must do all of the following:

- (1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.
- (2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.
- (3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:
  - a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
  - b. Receives from the Secretary a confirmation number authorizing the diversion.
  - c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.
- (4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. -- A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination

state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 30 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery.

(f) Sanctions. -- The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

- (1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.
- (2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty depends on the amount of fuel improperly transported or diverted and whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. For a second or subsequent assessment under this subsection, the penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

Sec. 5. G.S. 105-441(a) reads as rewritten:

"(a) Acts. -- Any ~~distributor~~ person who commits one or more of the following acts is guilty of a Class 1 misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Willfully fails to make a report required by this Article.
- (3) Willfully fails to pay a tax when due under this Article.
- (4) Makes a false statement in an application, a report, or a statement required under this Article.
- (5) Fails to keep records as required under this Article.
- (6) Refuses to allow the Secretary of Revenue or a representative of the Secretary of Revenue to examine the ~~distributor's~~ person's books and records concerning motor fuel.
- (7) Fails to disclose the correct amount of motor fuel sold or used in this State.
- (8) Fails to file a replacement bond or an additional bond as required under this Article.
- (9) Fails to show or give a shipping document as required under this Article."

Sec. 6. G.S. 105-447 reads as rewritten:

"§ 105-447. Reports and records of carriers movements of motor fuel.

~~Every person, firm or corporation engaged in the business of, or transporting motor fuel, whether common carrier or otherwise, and whether by rail, water, pipeline or over public highways, either in interstate or in~~

~~intrastate commerce, to points within the State of North Carolina, and every person, firm or corporation transporting motor fuel by whatever manner to a point in the State of North Carolina from any point outside of said State shall be required to keep for a period of two years from the date of each delivery records on forms prescribed by, or satisfactory to, the Secretary of Revenue of all receipts and deliveries of motor fuel so received or delivered to points within the State of North Carolina, including duplicate original copies of delivery tickets or invoices covering such receipts and deliveries, showing the date of the receipt or delivery, the name and address of the party to whom each delivery is made, and the amount of each delivery; and shall report, under oath, to the Secretary of Revenue, on forms prescribed by said Secretary of Revenue, all deliveries of motor fuel so made to points within the State of North Carolina. Such reports shall cover monthly periods, shall be submitted within the first 10 days of each month covering all shipments transported and delivered for the previous month, shall show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, the name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car, and the number of gallons contained therein if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein, and the consignor and consignee if shipped by water; the license number of each tank truck and the number of gallons contained therein, and the consignor and consignee if transported by motor truck; if delivered by other means the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel as the Secretary of Revenue may require: Provided, that the Secretary of Revenue may modify or suspend the provisions of this section with regard to reports of interstate or intrastate shipments or deliveries upon application of any licensed distributor: Provided, also, that the Secretary of Revenue shall have full power to require any distributor to make additional reports and to produce for examination duplicate originals of delivery tickets or invoices covering both receipts and deliveries of products as herein provided. The reports herein provided for shall cover specifically gasoline, kerosene, benzene, naphtha, crude oil, or any distillates from crude petroleum. Any person, firm or corporation refusing, failing or neglecting to make such report shall be guilty of a Class 1 misdemeanor.~~

(a) Report. -- A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make a monthly report to the Secretary of motor fuel received or delivered for import or export by the transporter during the month. The report is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

- (1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, and the date the motor fuel was received.



- (2) The name and address of each person to whom the transporter delivered motor fuel from a location inside the State to a location outside the State, the amount of motor fuel delivered, and the date the motor fuel was delivered.

(b) Records. -- A person who is required to submit a report under subsection (a) must keep a record of all shipping documents or other documents used to determine the information provided in the report. The records must be kept for three years from the due date of the report to which the records apply."

Sec. 7. G.S. 105-449.27 reads as rewritten:

"§ 105-449.27. ~~Article 9 of Revenue Act made applicable.~~ Shipping document requirements and transporter report requirements that apply to motor fuel also apply to fuel.

All the provisions of Article 9 of Chapter 105 of the General Statutes, relating to general administration, penalties and remedies pursuant to the State Revenue Act, shall insofar as practicable, and except when in a direct conflict with the provisions of this Article, be applicable with respect to this Article. The requirements set by G.S. 105-438.1 concerning a shipping document apply to fuel. The requirements set by G.S. 105-447 concerning reports and records of movements of motor fuel apply to movements of fuel."

Sec. 8. G.S. 105-449.34(a) reads as rewritten:

"(a) ~~General~~ Class 1 Misdemeanors. -- A person who commits one or more of the following acts is guilty of a Class 1 ~~misdemeanor and is punishable as provided in G.S. 14-3;~~ misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Willfully fails to make a report required by this Article.
- (3) Willfully fails to pay a tax when due under this Article.
- (4) Makes a false statement in an application, a report, or a statement required under this Article.
- (5) Fails to keep records as required under this Article.
- (6) Refuses to allow the Secretary or a representative of the Secretary to examine the licensee's books and records concerning fuel.
- (7) Fails to disclose the correct amount of fuel sold or used in this State.
- (8) Fails to file a replacement bond or an additional bond as required under this Article.
- (9) Fails to show or give a shipping document as required under this Article."

Sec. 9. G.S. 105-449.2 is amended by adding the following definitions in the appropriate order to read:

"(1a) Code. -- Defined in G.S. 105-228.90.

(2a) Dyed diesel fuel. -- Diesel fuel that is required to be dyed under section 4082 of the Code or under regulations adopted by the United States Environmental Protection Agency."

Sec. 10. Article 36A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.24A. Penalties for highway use of dyed diesel fuel.



It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted under section 4082 of the Code. A person who operates on a highway a motor vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the motor vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the motor vehicle. The penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed."

**Sec. 11.** This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1609

## CHAPTER 727

### AN ACT TO CHANGE THE SEASON FOR TAKING FOXES IN CASWELL AND NORTHAMPTON COUNTIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 1 of Chapter 908 of the 1991 Session Laws reads as rewritten:

"Section 1. Notwithstanding any other provision of law, there is an open season for taking foxes with rubber cleat traps from ~~January 31 through June 30~~ June 1 through February 28 of each year."

**Sec. 2.** Notwithstanding any other provision of law, there is an open season for taking foxes by trapping from January 5 through February 10 of each year.

**Sec. 3.** Notwithstanding any other provision of law, there is an open season for taking foxes with weapons from November 2 through February 10 of each year.

**Sec. 4.** Sections 2 and 3 of this act apply only to Northampton County.

**Sec. 5.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1650

## CHAPTER 728

### AN ACT TO MODIFY THE DISTRIBUTION OF ALCOHOLIC BEVERAGE CONTROL PROFITS FOR THE TOWN OF GRANITE FALLS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 5 of Chapter 546 of the 1963 Session Laws, as amended by Chapter 1054 of the 1973 Session Laws, Chapter 32 of the

1977 Session Laws, and Chapter 32 of the 1979 Session Laws, is further amended:

- (1) In subsection (a) by deleting "Ten per cent (10%) to be given to the Caldwell County Board of Education to be distributed on a per capita basis."; and
- (2) In subsection (d) by deleting "Fifty per cent (50%)" and by substituting "Sixty per cent (60%)".

**Sec. 2.** This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

H.B. 1794

## CHAPTER 729

### AN ACT TO INCORPORATE THE TOWN OF SANDYFIELD IN COLUMBUS COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** A Charter for the Town of Sandyfield is enacted to read:  
"CHARTER OF THE TOWN OF SANDYFIELD.

#### "CHAPTER I.

#### "INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Sandyfield are a body corporate and politic under the name 'Town of Sandyfield.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Sec. 1.2. *Map.* An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of such shall be filed in the office of the Columbus County Register of Deeds.

#### "CHAPTER II.

#### "CORPORATE BOUNDARIES.

"Sec. 2.1. *Town Boundaries.* Until modified in accordance with law the boundaries of the Town of Sandyfield are as follows:

Beginning at the point where the Bladen-Columbus County line intersects the center line of North Carolina Highway 11, thence proceeding along the Bladen-Columbus County line in a generally southwesterly direction across the Seaboard Coast Line Railroad tracks to the CP&L Powerline, thence following that powerline in a generally southeasterly direction to a point 1,525 feet past the point where the powerline crosses Coppersmith Branch, thence in a due line to the point where Waymans Creek intersects the Seaboard Coast Line Railroad Track, thence along the meanders of Waymans Creek generally to the east to the point where Waymans Creek intersects North Carolina Highway 11, thence proceeding along the center line of North Carolina Highway 11 to the point and place of beginning.

"Sec. 2.2. (a) Notwithstanding the provisions of Section 2.1 of this Chapter, the following described property is excluded from the corporate limits:

BEGINNING at an iron pipe in Bladen County on the South edge of State Highway No. 421, formerly No. 87, from Fayetteville to Wilmington and runs with said State Highway about South 52 East 66.86 chains to an iron pipe in an old marked line on the South edge of said highway in Columbus County, thence South 57 degrees 15 minutes West 17 chains to an iron pipe; thence south 70 degrees 18 minutes west 22 chains to an iron pipe and old stump; thence north 84 degrees 45 minutes west 7.92 chains to an iron pipe; thence north 40 degrees 18 minutes east 26 chains to an iron pipe; thence north 82 degrees 42 minutes west 26 chains to an iron pipe; thence south 40 degrees 18 minutes west 37.11 chains to an old buggy axle in an old marked line; thence with said old marked line about north 20 degrees 30 minutes east 66.25 chains to the beginning, containing 171 acres, more or less, and known as the John B. Love, Jr. place according to survey by Bruce Pierce, October, 1939, recorded in Plat Book 2, Page 72, and being the same property as described in deed from Lura H. Love, et al, to the party of the first part dated July 13, 1948 and duly recorded in the office of the Register of Deeds for Columbus County in Book 182, at page 434, reference to which deed is hereby made for a full and complete description of said lands and premises herein conveyed.

BEING same land described in deed dated 24 August, 1948, from Hobbs Lumber Company, Inc. to Lura H. Love recorded in Book 182, page 521, office of Register of Deeds of Columbus County, N.C.

That certain tract or parcel of land lying and being in Ransome Township, Columbus County, North Carolina, about one-half (1/2) mile south of the Bladen County line adjoining the lands of J.A. Owens and Cape Fear Wood Corporation, and described as follows, to-wit:

Beginning at a tall four-inch pipe corner with a concrete marker beside it near J.A. Owens Dairy Barn, the northeast corner of the tract of which this is a part; and runs thence with J.A. Owens' line the following courses and distances: South 44 degrees 40 minutes West 5.60 chains to an iron stake; thence South 43 degrees 35 minutes West 4.35 chains to a stake in the fence; thence South 43 West 8.09 chains to a stake in the fence; thence South 40 West 2.92 chains to a stake in the fence; thence South 40 degrees 30 minutes West 5.90 chains to a 4-inch pipe corner with a concrete corner beside it and old pointers at the corner of the fence; thence a new line North 31 West 23.08 chains to a concrete corner in the back line; also J.A. Owens line; thence with the back line North 41 degrees 30 minutes East 5.96 chains to a tall 4-inch pipe, the original North-west corner of the tract of which this is a part; thence South 80 degrees 15 minutes East 26.42 chains to the point of beginning, containing 36.25 acres, more or less.

This land is a part or parcel of that certain tract of land which contained 80 acres, more or less which was conveyed by John L. Owens and wife Ruth Owens to Cape Fear Wood Corporation by deed dated January 11, 1955, which is duly recorded in the Columbus County Registry.

(b) The Town may not exercise any extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes as to any property described in this section without the written request of the property owner.

**"CHAPTER III.****"GOVERNING BODY.**

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Sandyfield is the Town Council, which has five members, and the Mayor.

"Sec. 3.2. *Manner of Electing Council.* The qualified voters of the entire Town elect the members of the Council. To be eligible for election, a person must reside in the Town.

"Sec. 3.3. *Term of Office of Council Members.* Members of the Council are elected to four-year terms except that of those elected at the initial election in 1995, the three highest vote getters who are elected shall serve for four-year terms and the next two highest vote getters shall serve for two-year terms. In 1997 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 1999 and quadrennially thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3.4. *Election of Mayor; Term of Office.* The qualified voters of the entire Town of Sandyfield shall elect the Mayor in 1995 and biennially thereafter for a two-year term. In the event of a vacancy, the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term, but if the vote is tied, the Clerk of Superior Court of Columbus County shall break the tie.

**"CHAPTER IV.****"ELECTIONS.**

"Sec. 4.1. *Conduct of Town Elections.* Town elections shall be conducted on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Columbus County Board of Elections.

**"CHAPTER V.****"ADMINISTRATION.**

"Sec. 5.1. The Town of Sandyfield shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

**Sec. 2.** Until the organizational meeting of the Town Council of Sandyfield following the 1995 municipal election, Alfonza Brown, Foster Brown, Zannie Hall, Genoble King, and Annette Williams shall serve as members of the Town Council and Perry Dixon shall serve as Mayor. In the event of a vacancy on the Council or as Mayor, the Council shall appoint a qualified person to fill such vacancy until the organizational meeting, but if the vote is tied, the Clerk of Superior Court of Columbus County shall break the tie. The initial meeting of the Town Council shall be called by the Mayor.

**Sec. 3.** (a) From and after the effective date of this act, the citizens and property in the Town of Sandyfield shall be subject to municipal taxes levied for the year beginning July 1, 1994, and for that purpose the Town shall obtain from Columbus County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1994; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) If the effective date of this act is before July 1, 1994, the Town may adopt a budget ordinance for fiscal year 1993-94 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, and no ad valorem taxes may be levied for the 1993-94 fiscal year. The Town may adopt a budget ordinance for fiscal year 1994-95 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1994-95, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1994.

(c) If the effective date of this act is after June 30, 1994, the Town of Sandyfield is eligible to receive distributions of State funds as provided by law during fiscal year 1994-95 as if it had been in existence on July 1, 1994.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1084

## CHAPTER 730

### AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL CHANGES AND IMPROVEMENTS IN THE LAWS REGULATING SERVICE AGREEMENTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 1 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-1-36. Insurance policy requirements.

(a) Each service agreement company shall maintain contractual liability insurance or service agreement reimbursement insurance with an authorized insurer for one hundred percent (100%) of claims exposure, including reported and incurred but not reported claims and claims expenses, on business written in this State.

(b) All forms relating to insurance policies written by authorized insurers under this section shall be filed with and approved by the Commissioner before they may be used for any purpose in this State, irrespective of whether the insurers are licensed insurers.

(c) Each policy shall contain the following provisions:

- (1) If the service agreement company does not fulfill its obligations under service agreements issued in this State for any reason, including federal bankruptcy or state receivership proceedings, the insurer will pay losses and unearned premium refunds directly to any person making the claim under the service agreement.
- (2) The insurer shall assume full responsibility for the administration of claims if the service agreement company is unable to do so.
- (3) The policy is subject to the cancellation, nonrenewal, and renewal provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.



(4) The policy shall insure all service agreements that were issued while the policy was in effect, regardless of whether the premium was remitted to the insurer.

(5) If the insurer is fulfilling any service agreement covered by the policy and if the service agreement holder cancels the service agreement, the insurer shall make a full refund of the unearned premium to the consumer pursuant to G.S. 58-1-35(e)(3).

(d) The Commissioner may adopt rules, in addition to the requirements of this section, governing the terms and conditions of policy forms for the insurance required by this section."

Sec. 2. G.S. 58-1-35(k) is repealed.

Sec. 3. G.S. 58-1-25(c) through (g), 58-1-30(c) through (g), 58-1-35(g), 58-1-40, 58-1-41, 58-1-45, 58-1-50, and Section 52 of Chapter 504 of the Session Laws of 1993 are repealed.

Sec. 4. G.S. 58-1-25(e) and G.S. 58-1-30(e), which become effective October 1, 1994, are repealed.

Sec. 5. G.S. 58-1-35(h) reads as rewritten:

"(h) No insurer or service agreement company shall act as a fronting company for any unauthorized insurer or ~~unregistered service agreement company~~ company that is not in compliance with this section. As used in this subsection, 'fronting company' means a licensed insurer or ~~registered service agreement company~~ that, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unregistered service agreement companies that are not in compliance with this section a substantial portion of the risk of loss under agreements it writes in this State. Any insurer or service agreement company acting in violation of this subsection is subject to immediate suspension or revocation of its insurance license or service agreement registration."

Sec. 6. G.S. 58-1-30(a) reads as rewritten:

"(a) This section applies to all home appliance service agreement companies soliciting business in this State, but it does not apply to performance guarantees or warranties made by manufacturers in connection with the sale of new home appliances. This section does not apply to any home appliance dealer licensed to do business in this State (i) whose primary business is the retail sale and service of home appliances; (ii) who makes and administers its own service agreements without association with any other entity; and (iii) whose service agreements cover only appliances sold by the dealer to its retail customers, provided that the dealer complies with ~~G.S. 58-1-35~~ G.S. 58-1-35 and G.S. 58-1-36. Provided, however, that G.S. 58-1-36 does not apply to a service agreement contract offered by a person primarily engaged in the retail sale of goods and services who incidentally offers service agreement contracts and has a net worth of one hundred million dollars (\$100,000,000), has offered service agreement contracts for at least the preceding 10 years, and is required to file an SEC Form 10K. This section does not apply to any warranty made by a builder or seller of real property relating to home appliances that are sold along with real property. This section does not apply to any issuer of credit cards or charge cards that markets home appliance service agreements as an ancillary

part of its business; provided, however, that such issuer maintains ~~contractual liability~~ insurance in accordance with G.S. ~~58-1-35(k)~~ 58-1-36."

Sec. 7. Section 1 of this act becomes effective October 1, 1994, and applies to insurance policies that have inception or renewal dates on or after October 1, 1994. Sections 2, 4, and 6 of this act become effective October 1, 1994. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1146

## CHAPTER 731

AN ACT TO ESTABLISH THAT FAILURE TO PROVIDE OR PROVIDING FALSE INFORMATION BY ITINERANT MERCHANTS ON THEIR SOURCE OF MERCHANDISE SHALL CONSTITUTE A CLASS 3 MISDEMEANOR, AND TO AUTHORIZE IMPOUNDMENT OF MERCHANDISE IN SPECIFIED CIRCUMSTANCES.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 105-53 reads as rewritten:

"§ 105-53. *Peddlers, itinerant merchants, and specialty market operators.*

(a) Peddler. -- Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A 'peddler' is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars (\$25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars (\$25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. -- Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. An 'itinerant merchant' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant's license is not required to engage in the business of a specialty market vendor at a location licensed as a specialty market under subsection (c) of this section or at a specialty market that is exempt from the license requirement under subsection (c) because the specialty market operator is the State or a unit of local government. A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant

merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or the destruction of his inventory by fire or other catastrophe.

(c) Specialty Market Operator. -- Every person, other than the State or a unit of local government, engaged in business as a specialty market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of two hundred dollars (\$200.00) for each county in which he is engaged in business. A 'specialty market operator' is a person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) Specialty Market Vendor. -- The requirements and penalties set out in subsections (i) through (m) of this section apply to every person engaged in business as a specialty market vendor who is liable for retail sales tax under Article 5 of this Chapter. A 'specialty market vendor' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a specialty market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A 'specialty market' is a location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

(e) Exemptions. -- This section does not apply to the following:

- (1) A peddler or itinerant merchant:
  - a. Who sells farm or nursery products produced by him;
  - b. Who sells crafts or goods made by him or his own household personal property;
  - c. Who is a nonprofit charitable, educational, religious, scientific, or civic organization;
  - d. Who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
  - e. Who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.
- (3) An itinerant merchant:
  - a. Who locates at a farmer's market;
  - b. Who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or
  - c. Who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.
- (4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.

(f) **Person Defined.** -- As used in this section, 'person' has the same meaning as in G.S. 105-164.3(11).

(g) **County Exemption.** -- The board of county commissioners of any county in this State, upon proper application, may exempt from the annual license tax levied upon peddlers and itinerant merchants in this section disabled veterans of World War I, World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of this State for 12 or more months continuously, and widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to sell within the limits of the county without payment of any license tax to the State.

(h) **Repealed by Session Laws 1989, c. 435, s. 1.**

(i) **Display and Possession of Licenses and Identification.** -- An itinerant merchant shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor shall keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator shall have the license required by this section available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

Upon the request of any customer, State or local revenue agent, or law enforcement agent, a peddler, itinerant merchant, specialty market operator, or specialty market vendor shall provide its name and permanent address. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is not a corporation, he shall, upon the request of any customer, State or local revenue agent, or law enforcement agent, provide a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is a corporation, it shall, upon the request of any customer, State or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.

(i1) **Records of Source of New Merchandise.** -- Each peddler, itinerant merchant, and specialty market vendor shall keep a record of the source of new merchandise the merchant offers for sale. The record may be a receipt or an invoice from the person who sold the merchandise to the merchant or any other documentation that establishes the source of the merchandise. The merchant shall keep the record with the new merchandise being offered



for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of the source of new merchandise the merchant offers for sale. If the merchant fails to produce the requested record and the law enforcement agent has probable cause to believe the merchant's possession of the merchandise is unlawful, the agent may take the merchandise into custody as evidence. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1.

(j) Permission of Property Owner. -- An itinerant merchant or a peddler who travels from place to place by vehicle, in addition to other requirements of this section, shall obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. Such statement shall clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. Further, such statement shall be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

(k) Specialty Market Registration List. -- A specialty market operator shall maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. This registration list shall clearly and legibly show each specialty market vendor's name, permanent address, and retail sales and use tax registration number. The specialty market operator shall require each specialty market vendor to exhibit a valid retail sales tax license for visual inspection by the specialty market operator at the time of registration, and shall require each specialty market vendor to keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this subsection shall be retained by the specialty market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

(l) ~~Penalty.~~ Misdemeanor Violations. -- It shall be a Class 3 misdemeanor for a person ~~to~~ to do any of the following:

- (1) Fail to obtain a license as required by this ~~section~~; section.
- (2) Knowingly give false information in the application process for a license or when registering pursuant to subsection ~~(k)~~; (k).
- (3) If the person is an itinerant merchant, fail to display the license as required by subsection ~~(i)~~ or (i); if the person is a peddler or specialty market operator, fail to produce the license as required by subsection ~~(i)~~ or (i); or, if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, or specialty market operator shall



be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation; or violation.

- (4) Fail to provide name, address, or identification upon request as required by subsection (i) or provide false information in response to such a request.

- (5) Fail to keep a record of the source of new merchandise offered for sale as required by subsection (i).

(11) Additional Penalties. Misdemeanor Violations. -- It shall be a Class 3 misdemeanor, which may include a fine of up to one thousand dollars (\$1,000), for a specialty market operator to fail to comply with subsection (k) or for a specialty market vendor to fail to display the retail sales tax license as required by subsection (i). For the purposes of this section, the requirement that a retail sales tax license be displayed is satisfied if the vendor displays either (i) a copy of the license or (ii) evidence that the license has been applied for and the applicable license fee has been paid within 30 days before the date the license was required to be displayed. Whenever satisfactory evidence shall be presented in any court of the fact that display of a retail sales tax license was required by this section and such license was not displayed, the specialty market operator or vendor shall not be found guilty of that violation provided he produces in court a valid license which had been issued prior to the time he was charged with the violation.

(m) Local License. -- Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax. Further, this section does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, specialty market vendors, or specialty market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

Sec. 2. This act becomes effective January 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1517

## CHAPTER 732

### AN ACT TO AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES TO MINIMIZE THE RISK OF INJURY TO CHILDREN WHO USE PUBLIC SWIMMING POOLS.

Whereas, in recent years four children in North Carolina have suffered suction-related injuries while playing in public wading pools. These injuries were severe in three of the four cases and in one recent case the injuries were so extensive as to be life-threatening and cause permanent physical damage to the child; and

Whereas, the injuries to these children occurred in public wading pools where there was a single drain only, only one drain outlet to the pump, and the cover to the drain was not in place; and

Whereas, although current standards require that drain covers be secured, the covers are susceptible to easy and quick removal, thus making

it difficult for a pool operator to ensure that the drain covers are in place at all times during pool operation; and

Whereas, construction and design standards can be established to minimize the risk of suction injuries without requiring extensive remodeling to the pool, thus making the cost of complying with these standards reasonable; and

Whereas, the cost of treatment for one serious suction injury is many times greater than the cost to bring all pools to minimum standards; and

Whereas, the General Assembly recognizes that the risk of serious injury to children compels immediate action by the State to minimize that risk; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Effective January 1, 1995, except subsection (c) which becomes effective 30 days after ratification, G.S. 130A-282 reads as rewritten:

"§ 130A-282. *Commission to adopt rules; exception.*

(a) **Rules Required.** For protection of the public health and safety, the Commission shall adopt and the Department shall enforce rules concerning the construction and operation of public swimming pools. The Commission shall classify public swimming pools on the basis of size, usage, type, or any other appropriate factor and shall adopt requirements for each classification. The rules shall include requirements for:

- (1) Submission and review of plans prior to construction.
- (2) Application, review, expiration, renewal, and revocation or suspension of an operating permit.
- (3) Inspection.
- (4) Design and construction including materials, depth and other dimensions, and standards for the abatement of suction hazards.  
~~Construction and operation including water source, water quality and testing, materials, depth and other dimensions, fencing, water treatment, chemical storage, toilet and bath facilities, measures to ensure the personal cleanliness of bathers, safety equipment and other safety measures, and sewage and other wastewater disposal.~~
- (5) Operation and safety including water source, water quality and testing, fencing, water treatment, chemical storage, toilet and bath facilities, measures to ensure the personal cleanliness of bathers, safety equipment and other safety measures, and sewage and other wastewater disposal.

(b) **Exception.** Public swimming pools constructed or remodeled prior to May 1, 1993, that do not meet specific design and construction requirements of the rules for public swimming pools adopted by the Commission shall not be required to comply with ~~the design and construction requirements,~~ requirements other than requirements related to the abatement of suction hazards. Public swimming pools constructed or remodeled prior to May 1, 1993, shall comply with all other rules for public swimming pools adopted by the Commission.

(c) No single drain, single suction outlet public swimming pools less than 18 inches deep shall be allowed to operate."

Sec. 2. Effective January 1, 1995, except subsection (c) which becomes effective 30 days after ratification, G.S. 130A-23 reads as rewritten:

"§ 130A-23. *Suspension and revocation of permits and program participation.*

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-228 or G.S. 130A-248 shall be revoked immediately for failure of a market or a facility to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or revocation and shall immediately file a petition for a contested case in accordance with G.S. 150B-23."

Sec. 3. The Commission for Health Services shall adopt whatever temporary rules it deems necessary to minimize the risk of suction-related injuries to children during the 1994 pool season.

Sec. 4. The Department of Environment, Health, and Natural Resources shall disseminate not later than 15 days after ratification of this act written information designed to adequately inform local health departments, public swimming pool operators, and the general public of the presence of and ways to avoid hazards related to the use and operation of public swimming pools. This information shall include easily understandable language relating to suction hazards in wading pools.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 1712

## CHAPTER 733

AN ACT TO CONFORM NORTH CAROLINA LAWS REGARDING THE ESTABLISHMENT OF CHILD PATERNITY TO CERTAIN FEDERAL LAW REQUIREMENTS BY AMENDING THE NORTH CAROLINA LAWS OF EVIDENCE RELATING TO THE MANNER OF CONTESTING BLOOD OR GENETIC MARKER TESTS IN THE TRIAL OF CIVIL ACTIONS IN WHICH THE QUESTION OF PARENTAGE ARISES; BY PROVIDING FOR THE ENTRY OF JUDGMENT BY DEFAULT IN PATERNITY ACTIONS WHEN THE DEFENDANT FAILS TO FILE ANSWER; AND, BY GIVING FULL FAITH AND CREDIT TO OUT-OF-STATE PATERNITY DETERMINATIONS REGARDLESS OF METHOD OF ESTABLISHMENT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 8-50.1 reads as rewritten:

*"§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.*

(a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:

- (1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged-parent is not the natural parent; whereupon, the court shall enter the special verdict of not guilty; and
- (2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert

witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

(b) Repealed by Session Laws 1993, c. 333, s. 2.

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. ~~The testing expert's completed and certified report of the results and conclusions of the paternity blood test or genetic marker test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American Association of Blood Banks. Accreditation may be established by verified statement or reference to published sources. Any person contesting the results of a blood or genetic marker test has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. Any party objecting to or contesting the procedures or results of the blood or genetic marker tests shall file with the court written objections setting forth the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence. The person contesting the results of the blood or genetic marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. The results of the blood or genetic marker tests shall have the following effect:~~

- (1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence;
- (2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;
- (3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;
- (4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the parent and this evidence shall



be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence."

Sec. 2. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-132.1. Paternity determination by another state entitled to full faith and credit.

A paternity determination made by another state:

(1) In accordance with the laws of that state, and

(2) By any means that is recognized in that state as establishing paternity

shall be entitled to full faith and credit in this State."

Sec. 3. G.S. 1A-1, Rule 55(b), reads as rewritten:

"(b) Judgment. -- Judgment by default may be entered as follows:

- (1) By the Clerk. -- When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled 'Judicial Sales.'

- (2) By the Judge. -- In all other cases the party entitled to a judgment by default shall apply to the judge therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian *ad litem* or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the judge to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to take an investigation of any other matter, the judge may conduct such hearings or order such references as he deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by the Constitution or by any statute of North Carolina. If the plaintiff seeks to establish paternity under Article

3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default."

Sec. 4. This act becomes effective August 1, 1994, and applies to civil actions commenced on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

S.B. 764

## CHAPTER 734

AN ACT TO REMOVE THE DEADLINE ON APPLICATIONS FOR REFUNDS FROM THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM FOR COOPERATIVE AGRICULTURAL EXTENSION SERVICE EMPLOYEES.

*The General Assembly of North Carolina enacts:*

Section 1. Section 3 of Chapter 1061 of the 1987 Session Laws, as amended by Section 3 of the 1989 Session Laws, reads as rewritten:

"Sec. 3. The Board of Trustees of the Teachers' and State Employees' Retirement System shall reserve the sum of one million five hundred thousand dollars (\$1,500,000) and the Board of Trustees of the Local Governmental Employees' Retirement System shall reserve the sum of five hundred thousand dollars (\$500,000) from unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1987, for the purpose of funding this act. ~~Applications for refunds under this act shall be made on or before July 1, 1994.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1994.

S.B. 1707

## CHAPTER 735

AN ACT TO AMEND THE SETOFF DEBT COLLECTION ACT TO REQUIRE STATE AGENCIES TO SUBMIT CERTAIN DEBTS FOR COLLECTION BY SETOFF AGAINST THE DEBTORS' STATE INCOME TAX REFUNDS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 105A-2(1) is amended by changing the period at the end of subdivision s. to a semicolon and adding a new subdivision to read:

"t. Any State agency in the collection of salary overpayments from former employees."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1994.

H.B. 1983

## CHAPTER 736

AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO PAY THE NONBETTERMENT COSTS OF MOVING UTILITIES OWNED BY RURAL WATER SYSTEMS OPERATED BY COUNTIES AS ENTERPRISE SYSTEMS IN CONNECTION WITH HIGHWAY PROJECTS AND TO CLARIFY THAT BOARDS OF COUNTY COMMISSIONERS MAY ESTABLISH STAGGERED TERMS AND FOUR YEAR TERMS FOR ELECTION OF SANITARY DISTRICT BOARD MEMBERS AT ANY TIME.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 136-27.1 reads as rewritten:

*"§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.*

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; ~~or (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes.~~ Statutes; or (iv) a rural water system operated by county as an enterprise system."

**Sec. 1.1.** G.S. 130A-50(b) reads as rewritten:

"(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163-279, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the county board of commissioners so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The county board of commissioners shall notify the county board of elections of any decision made under this subsection.

If the sanitary district board consists of three members, the county commissioners may at any time increase the sanitary district board to five members. The increase shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the expansion to five members. The effective date of the expansion is the organizational meeting of the sanitary district board after the election.

The county commissioners may provide for staggering terms of an existing sanitary district board whose members serve two-year terms by providing for some of the members to be elected at the next election to be for four-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The county commissioners may provide for changing a sanitary district board from two-year terms to unstaggered four-year terms. This may be done either by providing that at the next election, all members shall be elected for four-year terms, or by extending the terms of existing members from two years to four years. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the change of length of terms."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1994.

H.B. 2009

## CHAPTER 737

### AN ACT TO EXEMPT THE CITY OF ASHEBORO FROM CERTAIN ZONING NOTICE REQUIREMENTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 160A-384(b) reads as rewritten:

"(b) The first class mail notice required under subsection (a) of this section shall not be required in the following situations:

- (1) The total ~~re~~zoning rezoning, including adoption of a new zoning map at a different scale, of all property within the corporate boundaries of a municipality unless rezoning involves zoning of parcels of land to less intense or more restrictive uses. If rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (a) of this section;
- (2) ~~The zoning is an initial zoning of the entire zoning jurisdiction area;~~
- (3) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;
- (4) The reclassification is an amendment to the zoning text; or
- (5) The city is adopting a water supply watershed protection program as required by G.S. 143-214.5.

In any case where this subsection eliminates the notice required by subsection (a) of this section, a city shall publish once a week for four successive calendar weeks in a newspaper having general circulation in the area maps showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the city's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs

immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning."

**Sec. 2.** This act applies to the City of Asheboro only.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1994.

S.B. 20

## CHAPTER 738

### AN ACT TO AMEND THE STATUTES RELATING TO THE ELECTORAL COLLEGE TO CONFORM THEM TO FEDERAL REQUIREMENTS AND STATE LAW.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 163-210 reads as rewritten:

"§ 163-210. Governor to proclaim results; casting State's vote for President and Vice-President.

Upon receipt of the abstracts prepared by the State Board of Elections and delivered to him in accordance with G.S. 163-192, the Secretary of State, under his hand and the seal of his office, shall certify to the Governor the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the old Hall of the House of Representatives in the State Capitol in the City of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the City of Raleigh. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The Secretary of State is responsible for making the actual arrangements for the meeting, preparing the agenda, and inviting guests.

~~On or before~~ Before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the ~~Administrator of General Services~~ Archivist of the United States, ~~a certificate~~ either three duplicate original certificates, or one original certificate and two authenticated copies of the Certificates of Ascertainment, under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. These Certificates of Ascertainment should be sent as soon as possible after the election, but must be received before the Electoral College meeting. At the same time he shall deliver to the electors six duplicate originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within 48 hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to



cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, the first and second alternates, respectively, who were nominated under G.S. 163-1(c), shall fill the first two vacancies. If the alternates are absent, ineligible, resign, or were not chosen, or if there are more than two vacancies, then the electors ~~those~~ present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice-President of the United States."

**Sec. 2.** G.S. 163-1(c) reads as rewritten:

"(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1994.

S.B. 605

## CHAPTER 739

### AN ACT TO EXEMPT WORKS OF ART FOR STATE BUILDINGS FROM STATE AND LOCAL SALES TAXES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-164.13 is amended by adding a new subdivision to read:

"(29a) Sales to State agencies of works of art for a State building pursuant to Article 47A of Chapter 143 of the General Statutes. As used in this subdivision, the terms 'works of art' and 'State building' have the meanings provided in G.S. 143-408.3."

**Sec. 2.** This act becomes effective September 1, 1994, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1994.

S.B. 883

## CHAPTER 740

## AN ACT TO CREATE THE NORTH CAROLINA PROFESSIONAL TEACHING STANDARDS COMMISSION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-295.1. North Carolina Professional Teaching Standards Commission.

(a) There is created the North Carolina Professional Teaching Standards Commission (the 'Commission'). The Commission shall be located administratively within the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide staff, offices, office equipment, and meeting space to the Commission.

(b) The purpose of the Commission is to establish high standards for North Carolina teachers and the teaching profession.

(c) The Commission shall consist of the following 18 members:

- (1) The State Superintendent of Public Instruction who shall serve as chair of the Commission.
- (2) A representative of the North Carolina Association of Educators appointed by the Governor.
- (3) A representative of the North Carolina Federation of Teachers appointed by the Governor.
- (4) Three teachers, at least one of whom teaches in elementary school and one of whom teaches special education, appointed by the Governor.
- (5) Two teachers, at least one of whom teaches in middle or junior high school, appointed by the President Pro Tempore of the Senate.
- (6) Two teachers, at least one of whom teaches in high school, appointed by the Speaker of the House of Representatives.
- (7) One school administrator, either a principal or a superintendent, appointed by the Governor.
- (8) Two representatives of teacher education institutions, one of whom shall be a representative of a University of North Carolina institution and one of whom shall be a representative of a private teacher education institution, appointed by the Governor.
- (9) One State Board member appointed by the chair of the State Board of Education.
- (10) Two at-large members appointed by the Governor.
- (11) Two at-large members, one of these members shall be appointed by the President Pro Tempore of the Senate, and one of these members shall be appointed by the Speaker of the House of Representatives.

In making appointments, the appointing authorities are encouraged to select qualified citizens who are committed to improving the teaching profession and student achievement and who represent the racial, geographic, and gender diversity of the State. The members shall serve for two-year terms. Initial terms shall begin September 1, 1994. Vacancies in the membership shall be filled by the original appointing authority using the same criteria as provided in this subsection.

(d) The Commission shall elect a vice-chair from among its membership. In the absence of the chair, the vice-chair shall preside over the Commission's meetings.

(e) Meetings of the Commission shall be held upon the call of the chair or the vice-chair with the approval of the chair.

(f) Members of the Commission who are State or public school employees shall receive travel expenses as set forth in G.S. 138-6. All other Commission members shall receive per diem and travel expenses as set forth in G.S. 138-5."

**Sec. 2.** (a) The Commission shall prepare a plan for how it could establish high standards for teachers and the teaching profession. In preparing the plan the Commission shall consider: (i) constitutional and statutory issues concerning the role of the Commission and its relationship to the State Board of Education; (ii) the model for a professional educator standards board under Article 19A of Chapter 115C of the General Statutes, Standards Board for Public School Administrators; and (iii) models for professional educator standards boards from other states. In developing the plan the Commission shall:

- (1) Recommend how to set high standards for the teaching profession;
- (2) Recommend how to improve the qualification of persons for licensure as public school teachers and other public school employees paid on the teacher salary schedules;
- (3) Consider current methods to assess teachers and teaching candidates including the National Teacher Exam, the assessments of the National Board for Professional Teaching Standards, and alternative methods to assess teachers;
- (4) Identify how the Commission could work with the State Board of Education to issue, renew, and revoke licenses;
- (5) Propose how to monitor the ethics and professional practices of teachers;
- (6) Consider whether there is a need to revise the method for the approval of reciprocity agreements between North Carolina and other states with regard to teacher licensure;
- (7) Make recommendations concerning statutory changes, staffing, and budgeting to implement the plan; and
- (8) Make recommendations concerning the role of the Professional Practices Commission.

(b) No later than November 1, 1994, the Commission shall make an interim report of its plan to the Governor, the Joint Legislative Education Oversight Committee, and the State Board of Education. No later than January 1, 1995, the Commission shall report its plan to the Governor, the

General Assembly, the Joint Legislative Education Oversight Committee, and the State Board of Education.

(c) The State Board of Education shall review the plan and shall submit its comments on the plan to the Joint Legislative Education Oversight Committee no later than the first Friday in February 1995.

**Sec. 3.** Per diem and travel expenses of the Commission shall be paid from within the funds appropriated to the Department of Public Instruction for the 1994-95 fiscal year.

**Sec. 4.** This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1994.

H.B. 2015

## CHAPTER 741

AN ACT TO CLARIFY THAT COUNTIES AND CITIES ARE NOT REQUIRED TO REVIEW AND APPROVE RESIDENTIAL PLANS SUBMITTED PURSUANT TO THE NORTH CAROLINA STATE BUILDING CODE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 153A-357(a) reads as rewritten:

"(a) (*Effective until January 1, 1995*) No person may commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;
- (2) The installation, extension, or general repair of any plumbing system;
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for

the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a misdemeanor.

(a) (*Effective January 1, 1995*) No person may commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;
- (2) The installation, extension, or general repair of any plumbing system;
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use



of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor."

**Sec. 2.** G.S. 160A-417(a) reads as rewritten:

"(a) (*Effective until January 1, 1995*) No person shall commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,
- (2) The installation, extension, or general repair of any plumbing system,
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential

building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary.

No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a misdemeanor.

(a) (*Effective January 1, 1995*) No person shall commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,

- (2) The installation, extension, or general repair of any plumbing system,
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor."

Sec. 3. Chapter 387 of the 1993 Session Laws is repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1994.

H.B. 2037

## CHAPTER 742

AN ACT AMENDING THE CHARTER OF THE TOWN OF GREEN LEVEL IN ALAMANCE COUNTY TO AUTHORIZE ENACTMENT OF A PROPERTY MAINTENANCE ORDINANCE AND THE ASSESSMENT OF CERTAIN COSTS OF ENFORCEMENT AS A LIEN AGAINST THE PROPERTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Charter of the Town of Green Level, being Chapter 942, 1989 Session Laws, is amended by adding the following new Chapter:

"Chapter VI.

"Additional Police Power Authority.

"Sec. 6.1. Removal of trash, weeds; lien. The Town Council may require the owner or owners of all premises, vacant or improved, to keep the same free from trash, obnoxious weeds, overgrowth, solid wastes, and stagnant water and may provide that in the case of failure on the part of such owner or owners to comply with any such requirement, an employee or contractor of the Town may go upon their premises and perform such work as may be necessary to comply with such requirement, and the Town may charge the cost thereof against the premises upon which such work is performed.

The costs to the Town of any work performed under this section shall constitute a lien against the premises upon which the work is performed and may be collected in the same manner as taxes upon real property. The term 'costs' as used in this section shall include interest at the rate of eight percent (8%) per annum until said lien is paid. Interest does not accrue until a bill for the costs becomes overdue."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1994.

S.B. 31

## CHAPTER 743

AN ACT TO REQUIRE THAT THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES REPORT ON ASSISTED LIVING TO THE NORTH CAROLINA HEALTH PLANNING COMMISSION ESTABLISHED BY CHAPTER 529 OF THE 1993 SESSION LAWS AND TO THE NORTH CAROLINA STUDY COMMISSION ON AGING.

Whereas, assisted living facilities are a recent addition to the continuum of long-term care services; and

Whereas, definitions of assisted living vary and often overlap with other models of residential care facilities; and

Whereas, North Carolina has no statutorily authorized definition of assisted living; and

Whereas, the Secretary of the Department of Human Resources established in August of 1993 an advisory committee called the Department of Human Resources Steering Team for Domiciliary Care to address a variety of issues that impact the provision of services to aged and disabled persons in the State's long-term care facilities; and

Whereas, one of the subcommittees will report to the Secretary on assisted living; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** The Secretary of the Department of Human Resources shall report findings and recommendations of the Department of Human Resources Steering Team for Domiciliary Care to the North Carolina Health Planning Commission established by Chapter 529 of the 1993 Session Laws and to the North Carolina Study Commission on Aging on or before October 1, 1994. Both Commissions shall consider these recommendations for inclusion in their legislative recommendations to the 1995 General Assembly.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1994.

S.B. 1612

**CHAPTER 744**

AN ACT TO AMEND THE ELECTION CAMPAIGN LAWS TO LIMIT THE EXEMPTION FROM REPORTING THE NAMES OF SMALL CONTRIBUTORS SO THAT IT APPLIES ONLY TO CONTRIBUTORS WHO ARE INDIVIDUALS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 163-278.8(d) reads as rewritten:

"(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars (\$100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars (\$100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars (\$100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars (\$100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars (\$100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars (\$100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt."

**Sec. 2.** This act becomes effective January 1, 1995, and applies to the reporting of all contributions accepted on or after that date. This act applies to all reports filed on or after January 1, 1995, but only to the extent that they describe contributions accepted on or after January 1, 1995.

In the General Assembly read three times and ratified this the 14th day of July, 1994.

## H.B. 1725

## CHAPTER 745

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO IMPROVE THE ADMINISTRATION OF THE SOFT DRINK EXCISE TAX, AND TO EXTEND THE SUNSET OF A TAX CREDIT, TO AMEND THE LAW REGARDING APPLICATION FOR CERTIFICATION AS A CLINICAL SOCIAL WORKER, TO RESTORE THE SOFT DRINK TAX EXEMPTION FOR NATURAL JUICE WITH NO ADDITIVES OTHER THAN VITAMINS, MINERALS, OR SUGAR, AND TO MAKE THE EFFECTIVE DATE OF CHANGES MADE DURING THE 1993 SESSION TO THE CONSUMER CREDIT SALE LAWS RETROACTIVE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 4 of Chapter 543 of the 1993 Session Laws is repealed.

**Sec. 2.** G.S. 105-113.18(3) reads as rewritten:

"(3) Shipping Report. -- Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary."

**Sec. 3.** G.S. 105-113.45 reads as rewritten:

"§ 105-113.45. *Excise taxes on soft drinks and base products.*

(a) Bottled Soft Drinks. -- An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. -- An excise tax at the rate of one dollar (\$1.00) a gallon, ~~or four-fifths of a cent (4/5¢) an ounce or a fraction of an ounce,~~ gallon is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. -- An excise tax is levied on each individual container of a dry base product at the rate:

(1) Of one cent (1¢) an ounce ~~or a fraction of an ounce~~ if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

**Sec. 4.** G.S. 105-130.5(a)(12) is reenacted and reads as rewritten:

"(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158."

**Sec. 5.** G. S. 105-130.5(b)(11) reads as rewritten:



"(11) ~~The amount by which~~ If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code for federal tax purposes or the amount of such a deduction that was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed."

Sec. 6. G. S. 105-130.37(b)(3) reads as rewritten:

"(3) 'Nonprofit organization' means an organization ~~for which contributions are deductible under G.S. 105-130.9 or 105-147(15) or (16), to which charitable contributions are deductible from gross income under the Code.~~"

Sec. 7. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property."

Sec. 8. G.S. 105-163.012(d) reads as rewritten:

"(d) ~~For purposes of this Article,~~ Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10), the taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. 'Allowable credit' means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section."

Sec. 9. G.S. 105-163.013(d) reads as rewritten:

"(d) Application Forms; Rules; Fees. Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections ~~(a), (b),~~ (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a misdemeanor and is punishable as provided in G.S. 14-3.

The fee for filing an application for registration under this section ~~shall be~~ is one hundred dollars (\$100.00). The fee for filing an application for renewal of registration under this section ~~shall be~~ is fifty dollars (\$50.00).

The fee for filing an application for reinstatement of registration under this section ~~shall be~~ is fifty dollars (\$50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided."

**Sec. 10.** G.S. 105-163.013(g) reads as rewritten:

"(g) ~~[Report by Secretary of State]~~. Report by Secretary of State. -- The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs."

**Sec. 11.** Effective July 1, 1995, G.S. 105-213(b), as amended by Section 26(a) of Chapter 321 of the 1993 Session Laws, reads as rewritten:

"(b) Allocation of Distribution. -- The amount of revenue to be distributed under subsection (a) shall be allocated among the counties in proportion to the net amount of taxes collected under this Article in each county during the preceding fiscal year. The net amount of taxes collected in a county is the amount collected less the amount of refunds made of taxes previously collected. The Secretary shall keep a separate record by counties of the taxes collected under this Article. The Secretary shall allocate the amount of revenue to be distributed under subsection (a) to the counties in accordance with the tax records. The amounts so allocated to each county shall in turn be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified."

For the purpose of computing the ~~distribution of the intangibles tax allocation of the tax under this subsection~~ to any county and the municipalities located in the county for any quarter with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department

shall use the last property valuation of the public service company that has been certified.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary information requested by the Secretary to enable the Secretary to allocate the amount distributed by this subsection. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount distributed by this subsection."

**Sec. 12.** G.S. 105-228.4(a) reads as rewritten:

"(a) As a condition precedent to doing business in this State, an insurance company must apply for and obtain a certificate of registration from the Commissioner of Insurance by March 1 of each year. The certificate shall become effective the following July 1 and shall remain in effect for one year. Except as provided in subsections (b) and (c) of this section, the insurance company shall pay an annual fee for the certificate as follows:  
~~Each insurance company shall, as a condition precedent for doing business in this State, on or before the first day of March of each year apply for and obtain from the Commissioner of Insurance a certificate of registration, or license, effective the first day of July, and shall pay for such certificate the following annual fees except as hereinafter provided in subsections (b) and (c):~~

For each domestic farmer's mutual assessment	
fire insurance company <del>each</del>	\$ 25.00
For each fraternal order	100.00
For each of all other insurance companies, except	
mutual burial associations taxed under G.S.	
105-121.1	500.00

The fees levied ~~above~~ in this subsection shall be in addition to those specified in G.S. 58-6-5."

**Sec. 13.** G.S. 105-228.90 reads as rewritten:

"§ 105-228.90. *Scope and definitions.*

(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection ~~fees~~ taxes levied under Article 3 of Chapter 119 of the General Statutes.

(b) Definitions. -- The following definitions apply in this Article:

- (1) Code. -- The Internal Revenue Code as enacted as of January 1, 1993, including any provisions enacted as of that date which become effective either before or after that date.
- (2) Reserved.
- (3) Electronic Funds Transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
- (4) Reserved.
- (5) Person. -- An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or

employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

- (6) Secretary. -- The Secretary of Revenue.
- (7) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection ~~fee~~ tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms 'tax' and 'additional tax' include penalties and interest as well as the principal amount.
- (8) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Sec. 14. G.S. 105-241.1(e) reads as rewritten:

"(c) ~~Where~~ Statute of Limitations. -- If a proper application for a license or a return has been filed and in the absence of fraud, the Secretary of ~~Revenue~~ shall assess any tax or additional tax due from a taxpayer within three years after the date upon which ~~such the~~ application or return is ~~was~~ filed or within three years after the date upon which ~~such the~~ application or return was required by law to be filed, whichever is the later. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary shall assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

~~Provided, the~~ The taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or ~~an~~ indefinite time, and if ~~such waiver is accepted by the Secretary he~~ time. If the Secretary accepts the waiver, the Secretary may institute assessment procedures at any time within the time extended by such the waiver. This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes."

Sec. 15. G.S. 105-241.2(b) reads as rewritten:

"(b) Secretary to Provide Records. -- Upon receipt by the Secretary of the taxpayer's petition, the Secretary shall transmit to the Tax Review Board all of the records, data, evidence, and other materials in the Secretary's possession pertaining to the matters the Tax Review Board is being requested by the taxpayer to review. The Secretary shall also transmit to the Board a copy of the decision of the ~~Board~~ Secretary on the matters."

Sec. 16. G.S. 105-241.2(e) reads as rewritten:

"(e) ~~Jeopardy Assessments.~~ Levies. -- At any time the Secretary may, if in the Secretary's opinion, such action is necessary for the protection of the interest of the State, proceed at once to levy the assessment for the amount of the tax against the property of the taxpayer seeking the administrative review. In levying the assessment the Secretary shall make a certificate verifying the essential parts relating to the tax, including the amount thereof



asserted to be due, the date when same is asserted to have become due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax. The Secretary shall transmit this certificate to the clerk of the superior court of any county in which the taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the certificate and to index it on the cross index of judgments. When so docketed and indexed, the certificate of tax liability shall constitute a lien upon the property of the taxpayer to the same extent as that provided for by G.S. 105-241. No execution shall issue on the certificate before final determination of the administrative review by the Tax Review Board; provided, however, if the Secretary determines that the collection of the tax would be jeopardized by delay, the Secretary may cause execution to be issued, as provided in this Chapter, immediately against the personal property of the taxpayer unless the taxpayer files with the Secretary a bond in the amount of the asserted liability for tax, penalty and interest. If upon final administrative determination the tax asserted or any part thereof is sustained, execution may issue on the certificate at the request of the Secretary and the sheriff shall proceed to advertise and sell the property of the taxpayer.

Within five days after a jeopardy levy is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the levy. Within 30 days after receipt of this statement or, if no statement was received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary shall determine whether the levy was reasonable under the circumstances. The Secretary shall give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5."

Sec. 17. G.S. 105-248 reads as rewritten:

"§ 105-248. ~~State taxes; purposes.~~ Purpose of State taxes.

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, ~~pensions for Confederate soldiers and widows,~~ the interest on the debt of the State, ~~for the public schools,~~ and other specific appropriations made by law, and shall be collected and paid into the ~~general fund of the State Treasurer,~~ General Fund.

~~Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations, other than the bonds of this State and of the United States government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculation, or rent, shall be exempt, other than bonds of this State and of the United States government, unless said rent or the~~



~~interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions."~~

Sec. 18. G.S. 105-258.1(e) reads as rewritten:

"(e) Suspension of Interview. -- The Department shall suspend an interview relating to the determination of a tax ~~if, if the taxpayer is not accompanied by a representative and, at any time during the interview, the taxpayer expresses the desire to consult with a person permitted to represent the taxpayer before the Department, another person.~~"

Sec. 19. The catch line of G.S. 105-269.3 reads as rewritten:

"§ 105-269.3. *Enforcement of Subchapter V and fuel inspection ~~fee~~ tax.*"

Sec. 20. G.S. 105-446 reads as rewritten:

"§ 105-446. *Refund for tax on motor fuel used other than to ~~propel~~ operate a motor vehicle.*

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund for the tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440."

Sec. 21. G.S. 105-449.16(a) reads as rewritten:

"(a) A tax is imposed upon all of the following fuel:

- (1) Fuel sold or delivered by a supplier to a licensed user-seller.
- (2) Fuel used by a supplier in a motor vehicle owned, leased, or operated by the supplier.
- (3) Fuel delivered by a supplier directly into the fuel supply tank of a motor vehicle.
- (4) Fuel imported by a user-seller into this State, by a means other than carrying the fuel in a fuel supply tank of a motor vehicle, for resale or to propel operate a motor vehicle.
- (5) Fuel acquired tax free by a user-seller or user in this State for resale or to propel operate a motor vehicle.

The tax on liquid fuel is at the rate established under G.S. 105-434. The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid fuel, as determined by the Secretary. A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller.

The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of the tax from the supplier instead of the user. The tax levied by this Article is in lieu of rather than in addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article constitutes compliance with G.S. 105-435."

Sec. 22. G.S. 105-449.17 reads as rewritten:

"§ 105-449.17. *Exemption for fuel sold for nonhighway use.*

The tax imposed by this Article does not apply to fuel sold or delivered by a supplier to a user or user-seller when all of the following apply:

- (1) The fuel is for a purpose other than to ~~propel~~ operate a motor vehicle.
- (2) The supplier dispenses the fuel into a storage facility that is not required to be marked or is marked as follows with the phrase 'For Nonhighway Use' or a similar phrase that clearly indicates the fuel is not to be used to ~~propel~~ operate a motor vehicle:
  - a. The storage tank of the storage facility must be marked if the storage tank is visible.
  - b. The fillcap or spill containment box of the storage facility must be marked.
  - c. The dispensing device that serves the storage facility must be marked.

A storage facility must be marked unless it contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

- (3) The supplier does not know or have reason to know the fuel is to be used to ~~propel~~ operate a motor vehicle.

A supplier is liable for the tax due on fuel dispensed into a storage facility of a user or user-seller that is required to be marked but is not marked to indicate the fuel is to be used for a purpose other than to ~~propel~~ operate a motor vehicle. A user or user-seller is liable for the tax due on fuel dispensed by a supplier into a storage facility that is marked for nonhighway use and is subsequently used or sold for use to ~~propel~~ operate a motor vehicle."

**Sec. 23.** G.S. 105-449.18 reads as rewritten:

"§ 105-449.18. *Liability for tax on non-tax-paid fuel sold or delivered to unlicensed persons.*

A person who, knowing or having reason to know that the fuel is to be sold or used to ~~propel~~ operate a motor vehicle, sells or delivers to a person who is not licensed under this Article fuel on which the tax due under this Article has not been paid is liable for the tax imposed on the fuel by this Article."

**Sec. 24.** G.S. 105-449.19 reads as rewritten:

"§ 105-449.19. *Time when supplier must file return and pay any tax due.*

(a) Return. -- A supplier of fuel who acquires, sells, delivers, or uses part or all of the fuel to ~~propel~~ operate a motor vehicle must file a monthly return. A supplier of fuel who sells, delivers, or uses fuel only for a purpose other than to ~~propel~~ operate a motor vehicle must file a quarterly return. A return must be filed with the Secretary on a form provided by the Secretary. A monthly return covers a calendar month and is due within 25 days after the end of each month. A quarterly return covers a calendar quarter and is due within 30 days after the end of each quarter. Tax owed by a supplier on fuel acquired, sold, delivered, or used by the supplier during a reporting period is due when the return for that period is due.

(b) Information. -- A return filed by a supplier must contain all of the following information:

- (1) The amount of fuel the supplier had on hand on the first and last days of the reporting period.
- (2) The amount of fuel the supplier received during the reporting period.
- (3) The amount of fuel the supplier used during the reporting period to ~~propel~~ operate a motor vehicle and the amount of fuel the supplier used during the reporting period for a purpose other than to ~~propel~~ operate a motor vehicle, stated separately.
- (4) The amount of fuel the supplier sold or delivered to a licensed bulk-user, a licensed reseller, a licensed user, or other persons, stated separately."

Sec. 25. G.S. 105-449.20 reads as rewritten:

"§ 105-449.20. *When Secretary may estimate tax liability of supplier or user-seller.*

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the unreported fuel tax-free to ~~propel~~ operate a motor vehicle. When a user-seller sells or uses more fuel to ~~propel~~ operate a motor vehicle than the user-seller reports to the Secretary as having been purchased from a supplier to ~~propel~~ operate a motor vehicle, the user-seller is presumed to have acquired tax-free to ~~propel~~ operate a motor vehicle all fuel not reported as having been acquired to ~~propel~~ operate a motor vehicle."

Sec. 26. G.S. 105-449.26 reads as rewritten:

"§ 105-449.26. *User-sellers and certain suppliers must give receipts for and keep records of fuel sold at retail.*

(a) Receipts and Records. -- When required by this section, a user-seller and a supplier who is also a reseller but is licensed only as a supplier must give a receipt for and keep a record of certain fuel sold at retail from any of the following locations:

- (1) A retail service station or other retail establishment operated by the user-seller or supplier.
- (2) A bulk storage facility of the user-seller or supplier to which the buyer came to buy the fuel.
- (3) Any other location at which the user-seller or supplier dispenses fuel into a motor vehicle.

If the fuel is sold to ~~propel~~ operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt and must keep a record of any receipt given. If the fuel is diesel and is sold for a purpose other than to ~~propel~~ operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt but must always keep a record of the sale unless subsection (c) exempts the user-seller or supplier from the requirement of keeping a record.

If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at retail to ~~propel~~ operate a motor vehicle, the Secretary may

require the user-seller or supplier to keep a record of all fuel sold at retail to ~~propel~~ operate a motor vehicle. A user-seller or supplier who is required to keep a record of diesel sold at retail for a purpose other than to ~~propel~~ operate a motor vehicle is liable for the excise tax and the inspection fee tax on the diesel if the user-seller or supplier does not keep a record of the sale.

(b) Content. -- A record of a sale and a receipt for a sale shall include all of the following information:

- (1) The name and address of the user-seller or supplier.
- (2) The name and address of the person buying the fuel.
- (3) The date the fuel was sold.
- (4) The amount of fuel sold.
- (5) The type of fuel sold.
- (6) The total sales price of the fuel.
- (7) Either of the following:
  - a. The company name and company unit number of the motor vehicle into which the fuel was dispensed.
  - b. The license plate number of the motor vehicle into which the fuel was dispensed and the state that issued the license plate.
- (8) If the fuel is diesel and is sold for a purpose other than to ~~propel~~ operate a motor vehicle, the type of container or equipment into which the fuel was dispensed.

(c) Exception. -- A user-seller or supplier who sells diesel at a marina from a storage facility whose location makes it improbable that the diesel could be dispensed for a purpose other than to ~~propel~~ operate a watercraft must keep a record of a sale only if the user-seller or supplier gives the buyer a receipt for the sale."

Sec. 27. G.S. 105-449.32 is repealed.

Sec. 28. G.S. 18B-902(e) reads as rewritten:

"(e) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars (\$200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars (\$300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars (\$150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars (\$150.00). If application is made in the same year for vendor representative permits to represent more than one vendor, only one fee shall be paid. If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be ~~twenty-five dollars (\$25.00).~~ fifty dollars (\$50.00)."

Sec. 29. G.S. 119-16.2 reads as rewritten:

"§ 119-16.2. Application for license.

~~Any person, firm or corporation having in his possession kerosene on which the inspection fee has not been paid, and who is not required to be licensed under the provisions of G.S. 105-433, shall, prior to the~~

~~commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed by the Secretary setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require. Each distributor shall at the same time file a bond in such amount, not exceeding twenty thousand dollars (\$20,000) in such form and with such surety or sureties as may be required by the Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. Upon approval of the application and bond, the Secretary of Revenue shall issue to the distributor a nonassignable license with a duplicate copy of each place of business of said distributor in this State, a copy of which shall be displayed conspicuously at each such place of business and shall continue in force until surrendered or cancelled. No distributor shall sell, offer for sale, or use any kerosene within this State, until such license has been issued. Any distributor failing to comply with or violating any of the provisions of this section shall be~~ A person may not engage in business as a kerosene distributor unless the person has either a license issued under G.S. 105-433 or a kerosene license issued under this section. To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars (\$20,000). An applicant must give the Secretary the same information the applicant would be required to give under G.S. 105-433 if the applicant were applying for a license under that section. A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under G.S. 105-433, and is subject to the same restrictions as a license issued under that section. A person who fails to comply with this section is guilty of a Class 1 misdemeanor.

**Sec. 30.** G.S. 158-37(b)(3) reads as rewritten:

"(3) Except as otherwise provided in this Article, to exercise the powers granted to a local government for development by G.S. 158-7.1 ~~and the powers granted to certain local governments for development in G.S. 158-7.1(d1),~~ 158-7.1, except the power to levy a property tax."

**Sec. 31.** G.S. 158-37(b)(10) reads as rewritten:

"(10) To exercise the powers of a regional planning commission as provided in G.S. 153A-395 and the powers of a regional economic development commission as provided in G.S. 158-13, Article 2 of this Chapter, but the Zone does not have the authority to establish land-use zoning in any county."

**Sec. 32.** Effective October 1, 1994, G.S. 105-113.51 reads as rewritten:



"§ 105-113.51. *Liability for and payment of excise taxes.*

(a) ~~Primary Liability.~~ Liability. -- The distributor, wholesale dealer, or retail dealer who first distributes, sells, consumes, or otherwise handles bottled soft drinks or base products in this State is liable for the tax imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State a bottled soft drink or base product made outside the State is the first person to handle the bottled soft drink or base product in this State. A distributor, wholesale dealer, or retail dealer who is the original consignee of a bottled soft drink or base product that is made outside the State and is shipped into the State is the first person to handle the bottled soft drink or base product in this State.

Presentation of a soft drink certificate of liability to a distributor or a wholesale dealer releases the distributor or wholesale dealer from liability under this subsection. Subsection (b) of this section governs who is liable when a soft drink certificate of liability is presented.

(b) ~~Secondary Liability.~~ Soft Drink Certificate of Liability. -- ~~A retail dealer who acquires non-tax-paid bottled soft drinks or non-tax-paid base products from a distributor or a wholesale dealer is liable for any tax due on the bottled soft drinks or base products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax. A distributor, a wholesale dealer, or a retail dealer may apply to the Secretary for a soft drink certificate of liability. A distributor, a wholesale dealer, or a retail dealer who has a soft drink certificate of liability may purchase non-tax-paid bottled soft drinks or non-tax-paid base products from a distributor or a wholesale dealer by presenting the certificate to the distributor or wholesale dealer. Presentation of the certificate to a distributor or a wholesale dealer authorizes the distributor or wholesale dealer to sell non-tax-paid bottled soft drinks or non-tax-paid base products to the person who presents the certificate; it releases the distributor or wholesale dealer from liability for any tax due on the sale and transfers the liability to the person who presents the certificate.~~

A distributor or a wholesale dealer to whom a soft drink certificate of liability is presented must accept the certificate. A soft drink certificate of liability is considered to have been presented to a distributor or a wholesale dealer when the person to whom it is issued gives a copy of it to the distributor or wholesale dealer. When a person presents a soft drink certificate of liability to a distributor or a wholesale dealer, it indicates the person's intent that the certificate apply to all future sales to the person by the distributor or wholesale dealer. Once presented, a soft drink certificate of liability remains in effect until the person who presented the certificate gives the distributor or wholesale dealer to whom it was presented written notice that the certificate no longer applies.

(c) ~~Monthly Report.~~ -- ~~Except for tax on a designated sale under subsection (d), the~~ The taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 15 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

~~(d) Designation of Exempt Sale. -- A distributor or a wholesale dealer who sells a bottled soft drink or a base product to a person who has notified the distributor or wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.46(7) or (8) may, when filing a monthly report under subsection (c), designate the quantity of bottled soft drinks or base products sold to the person for resale. A distributor or wholesale dealer shall report a designated sale on a form provided by the Secretary.~~

~~A distributor or a wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The distributor or wholesale dealer shall pay the tax due on all other sales in accordance with this section. A distributor, a wholesale dealer, or a customer of a distributor or wholesale dealer may not delay payment of the tax due on a bottled soft drink or base product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of bottled soft drinks or base products that will be resold in a transaction exempt under G.S. 105-113.46(7) or (8).~~

~~A person who does not sell a bottled soft drink or base product in a transaction exempt under G.S. 105-113.46(7) or (8) after a distributor or a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a bottled soft drink or a base product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the distributor or wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A distributor or a wholesale dealer who does not pay tax on a bottled soft drink or base product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.~~

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 16, effective July 15, 1992."

Sec. 33. Effective October 1, 1994, G.S. 105-113.52(a) reads as rewritten:

"(a) Tax Reduction. -- The tax on the first 15,000 gross of bottled soft drinks sold at wholesale on or after October 1 of each year by a distributor or wholesale dealer who is liable for the tax and who files a timely report under G.S. 105-113.51 is seventy-two cents (72¢) a gross rather than the amount stated in G.S. 105-113.45. The tax reduction does not apply to bottled soft drinks acquired by the distributor or wholesale dealer in a sale in which the distributor or wholesale dealer presented a soft drink certificate of liability, and it does not apply to sales made by a distributor or wholesale dealer who is not licensed as required by this Article. When reporting tax due on bottled soft drinks to which this reduced rate applies, a distributor or wholesale dealer shall pay the reduced amount."

Sec. 34. G.S. 105-130.27(g) reads as rewritten:

"(g) Expiration. -- This section applies only to costs incurred during taxable years beginning prior to January 1, 1996, 1998."

Sec. 35. G.S. 105-151.6(g) reads as rewritten:

"(g) Expiration. -- This section applies only to costs incurred during taxable years beginning prior to January 1, 1996, 1998."

Sec. 36. Effective August 1, 1994, G.S. 130A-309.81 reads as rewritten:

"§ 130A-309.81. *Management of discarded white goods; ~~additional disposal fee prohibited.~~*

(a) Duty. -- Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

(b) Restrictions. -- A unit of local government or a contracting party may not charge a disposal fee for the disposal of white goods ~~that is in addition to the fee charged for the disposal of any other type of municipal solid waste goods.~~ A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. -- Each county shall establish written procedures for the management of white goods. The county shall include the procedures in any solid waste management plan required by the Department under this Article."

Sec. 37. Section 6 of Chapter 471 of the 1993 Session Laws is repealed.

Sec. 38. Effective July 1, 1998, G.S. 130A-309.81, as amended by this act, reads as rewritten:

"§ 130A-309.81. *Management of discarded white goods; ~~disposal fee prohibited.~~ allowed.*

(a) Duty. -- Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

(b) Restrictions. -- A unit of local government or a contracting party may ~~not~~ charge a disposal fee for the disposal of white goods. A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. -- Each county shall establish written procedures for the management of white goods. The county shall include the procedures in any solid waste management plan required by the Department under this Article."

Sec. 38.1. G.S. 90B-10(b)(1) reads as rewritten:

"(1) A person who has engaged in clinical social work practice for one year prior to the effective date of this act and who properly applies for and pays the required fees for a certificate as a certified clinical social worker prior to January 1, 1993.

Notwithstanding the foregoing provision of this subdivision, any applicant who applied for certification pursuant to this subdivision between December 1, 1993, and January 15, 1994, and who is otherwise eligible for certification under this subdivision but for the January 1, 1993, deadline shall be certified."

**Sec. 38.2.** (a) G.S. 105-113.46 reads as rewritten:

"§ 105-113.46. *Exemptions.*

The taxes imposed by this Article do not apply to an item that is listed in this section and, if the item is a bottled soft drink or a juice concentrate included in subdivision ~~(2) or (3)~~, (2), (3), or (3a), is registered with the Secretary in accordance with G.S. 105-113.47:

- (1) A natural liquid milk drink produced by a farmer or a dairy.
- (2) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under subdivision (1).
- (3) Natural juice.
- (3a) Juice that would be natural if it did not contain sugar.
- (4) Natural water.
- (5) A base product used to make a bottled soft drink subject to tax under this Article.
- (6) Coffee or tea in any form.
- (7) A bottled soft drink or base product sold outside the State.
- (8) A bottled soft drink or base product sold to the federal government.
- (9) A base product for domestic use that either contains milk or, according to directions on the base product's container, requires milk to be added to make a soft drink."

(b) G.S. 105-113.47(a) reads as rewritten:

"(a) Requirement. -- To be exempt from the tax imposed by this Article, the following items must be registered with the Secretary as an exempt item:

- (1) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under G.S. 105-113.46(1).
- (2) A natural juice bottled soft drink.
- (3) A natural juice concentrate.
- (4) A juice concentrate or juice bottled soft drink that would be natural if it did not contain sugar.

To register an item as exempt, the person who controls the brand name or formula of the item must file an application for registration with the Secretary on a form provided by the Secretary. An application must include an affidavit stating the complete and itemized formula by volume of the bottled soft drink or juice concentrate that is the subject of the application."

(c) This section becomes effective October 1, 1994.

**Sec. 38.3.** (a) G.S. 25A-27 is amended by adding two new subsections to read:

"(c) For payments received by a seller on or after October 1, 1988, but before October 1, 1993, a seller may elect to apply the provisions of this section as the section read October 1, 1993, or as the section read September 30, 1993. A seller made this election when the seller



determined, and disclosed to the buyer, how payments received on a consumer credit sale would be applied: either on a proportional basis or on a 'first in - first out' basis with the payments applied first to finance charges and then to principal in the order that each obligation is assumed.

(d) The exclusive remedy for failure of a seller to apply payments of a buyer as required by subdivision (a)(3) or (b)(2) of this section during the period October 1, 1993, through October 1, 1996, is an order that the seller apply the payments as required by those provisions."

(b) G.S. 25A-27(c), as enacted by this section, does not apply to pending actions.

**Sec. 39.** G.S. 105-275(19) reads as rewritten:

"(19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd ~~Fellows~~ Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by ~~said~~ the organization, together with ~~such~~ as much additional adjacent real property as may be necessary for the convenient normal use of the ~~buildings thereon~~ buildings. Notwithstanding the exclusive-use requirement ~~hereinabove established~~, of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, ~~assessed~~ assessed, or taxed if the entire property were so used, that part, according to its ~~value~~ value, shall not be listed, appraised, ~~assessed~~ assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this ~~section~~ subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes."

**Sec. 40.** Except as otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 1878

## CHAPTER 746

AN ACT TO ENABLE THE COUNTY OF AVERY TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** There is hereby created the "Avery County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"),



which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

**Sec. 2.** The Airport Authority shall consist of five members who shall be appointed to staggered terms of four years by the Avery County Board of Commissioners. Three of the members shall be residents of Avery County and two of the members may be nonresidents of Avery County. Of the initial five members, two shall be appointed to a term of four years and three shall be appointed to a term of two years. If one or two of the members appointed are nonresidents, the term of one nonresident shall be four years. Thereafter all terms shall be for four years. Each member shall take and subscribe before the Clerk of the Superior Court of Avery County an oath of office and file the same with the Avery County Board of Commissioners. Upon the occurrence of any vacancy on the Airport Authority, the vacancy shall be filled within 60 days after the vacancy occurs at a regular meeting of the Board of County Commissioners.

**Sec. 3.** The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority shall receive no compensation or per diem, but shall be allowed and paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority.

**Sec. 4.** (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate, real or personal property.
- (2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise, any existing lease, leasehold right, or other interest in any existing airport located in the County.
- (3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.
- (4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration.
- (5) To issue revenue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.
- (6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made

without the approval of the Avery County Board of Commissioners.

- (7) To purchase any insurance that the Federal Aviation Authority or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities. Avery County shall not undertake any personal or property liability.
- (8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.
- (9) To purchase any of its outstanding bonds or notes.
- (10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion pictures, personal service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.
- (11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
- (12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.
- (13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.
- (14) To have a corporate seal, which may be altered at will.

(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Sec. 5. The Airport Authority may acquire from the County, by agreement with the County, and the County may grant and convey, either by gift or for such consideration as the County may deem wise, any real or personal property which it now owns or may hereafter acquire, including

nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the County.

**Sec. 6.** Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be acquired, owned, controlled, and occupied for a public purpose.

**Sec. 7.** Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes.

**Sec. 8.** The Airport Authority shall make an annual report to the Avery County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Avery County, or any subdivision thereof, or to impose any obligation on Avery County, or any of its subdivisions, except when that power is expressly granted by statute.

**Sec. 9.** Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports, and the regulation of aircraft, are vested in the Airport Authority. The Avery County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Avery County to control, regulate, and provide for the development of aviation in Avery County.

**Sec. 10.** The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

**Sec. 11.** The Airport Authority may employ any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

**Sec. 12.** The Avery County Board of Commissioners may appropriate funds derived from any source other than ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Avery County Board of Commissioners.

**Sec. 13.** The Airport Authority may expend the funds that are appropriated by the County for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

**Sec. 14.** The Airport Authority shall elect from among its members a chair, a secretary, and a treasurer at its initial meeting and then annually thereafter. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

**Sec. 15.** The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by

the Avery County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Avery County Airport Authority.

**Sec. 16.** If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

**Sec. 17.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 2039

## CHAPTER 747

AN ACT TO MAKE A TECHNICAL CORRECTION IN A LOCAL ACT  
CONCERNING A DEANNEXATION FROM THE CITY OF  
BURLINGTON.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 162 of the Session Laws of 1993 reads as rewritten:

"Sec. 2. The following described property is removed from the corporate limits of the City of Burlington.

A certain tract or parcel of land in Graham Township, Alamance County, North Carolina, bounded on the south by the existing City of Burlington Corporate Limits north of Shamrock Drive, bounded on the west by property owned by Helen N. Barnhart, bounded on the north by Little Alamance Creek, and bounded on the east by property owned by Charles R. Harden, and being more particularly described as follows:

BEGINNING at an iron stake in the existing City of Burlington Corporate Limit line, said stake being a common corner with Charles R. Harden and Cathy S. Thompson and lying S. 44 deg. 10' 01" E. 895.07 feet from a common corner with Helen N. Barnhart and Shamrock Park Golf Course and a corner with the existing corporate limit line and running thence from said beginning point with the existing City of Burlington Corporate Limits north of Shamrock Drive, N. 44 deg. 10' 01" W. 550.57 feet to an iron stake corner with Helen N. Barnhart, N. 44 deg. 50' 06" E. 121.42 feet to the center of Little Alamance Creek; thence with the center of Little Alamance Creek the following courses and distances: S. 65 deg. 31' 13" E. 156.63 feet to a point; thence S. 73 78 deg. 14' 10" E. 223.67 feet to a point; thence S. 81 deg. 41' 43" E. 60.07 feet to a corner with Charles R. Harden; thence with the line of Charles R. Harden, S. 18 deg. 46' 09" W. 382.18 feet to the beginning and containing 2.555 acres."

**Sec. 2.** This act becomes effective October 31, 1989.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 1467

## CHAPTER 748

## AN ACT TO STRENGTHEN THE REQUIREMENTS TO HAVE A CHILD IN A RESTRAINT SYSTEM WHILE OPERATING A MOTOR VEHICLE.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 20-137.1 reads as rewritten:**"§ 20-137.1. Child restraint systems required.**

(a) Every driver who is transporting a child of less than ~~six~~ 12 years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which ~~met applicable~~ meets federal standards applicable at the time of its manufacture. The requirements of this section may be met when the child is ~~three~~ four years of age or older by securing the child in a seat safety belt.

(b) The provisions of this section shall not apply: ~~(i) to vehicles registered in another state or jurisdiction;~~ ~~(ii) (i)~~ to ambulances or other emergency vehicles; ~~(iii) (ii)~~ when the child's personal needs are being attended to; ~~(iv) (iii)~~ if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or ~~(v) (iv)~~ to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any person convicted of violating this section may be punished by a fine not to exceed twenty-five dollars (\$25.00). No driver charged under this section for failure to have a child under ~~three~~ four years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence *per se* or contributory negligence *per se* nor shall it be evidence of negligence or contributory negligence."

**Sec. 2.** This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 61

## CHAPTER 749

## AN ACT TO REQUIRE THAT THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION CONSIDER VARIOUS FACTORS PRIOR TO GRANTING ABC PERMITS, TO LENGTHEN THE PERIOD OF NOTICE TO LOCAL GOVERNMENTS, AND TO CLARIFY THAT NO NOTICE NEED BE GIVEN TO LOCAL GOVERNMENTS UNLESS THE PERMIT IS PERMANENT.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 18B-901(c) reads as rewritten:

"(c) Factors in Issuing Permit. -- Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for



which he has applied. To be a suitable place, the establishment shall comply with all applicable building and fire codes. Other factors the Commission ~~may~~ shall consider in determining whether the applicant and the business location are suitable are:

- (1) The reputation, character, and criminal record of the applicant;
- (2) The number of places already holding ABC permits within the neighborhood;
- (3) Parking facilities and traffic conditions in the neighborhood;
- (4) Kinds of businesses already in the neighborhood;
- (5) Whether the establishment is located within 50 feet of a church or public school or church school;
- (6) Zoning laws;
- (7) The recommendations of the local governing body; and
- (8) Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether operation of his business at that location would be detrimental to the neighborhood."

Sec. 2. G.S. 18B-901(b) reads as rewritten:

"(b) Notice to Local Government. -- Before issuing ~~an~~ a retail ABC permit, other than a:

- (1) Special occasion permit under G.S. 18B-1001(8);
- (2) Limited special occasion permit under G.S. 18B-1001(9);
- (3) Temporary permit under G.S. 18B-905; or
- (4) Special one-time permit under G.S. 18B-1002

for an establishment, the Commission shall give notice of the permit application to the governing body of the city in which the establishment is located. If the establishment is not inside a city, the Commission shall give notice to the governing body of the county. The Commission shall allow the local governing body ~~10~~ 15 days from the time the notice was mailed or delivered to file written objection to the issuance of the permit. To be considered by the Commission, the objection shall state the facts upon which it is based."

Sec. 3. This act is effective upon ratification, but only applies to permits applied for on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 1566

## CHAPTER 750

### AN ACT TO PROVIDE FOR UNIFORM DRIVERS LICENSE AND VEHICLE REGISTRATION INFORMATION.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 20-7 reads as rewritten:

"§ 20-7. *Issuance and renewal of drivers licenses.*

(a) License Required. -- To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive ~~that vehicle.~~ the vehicle and must carry the license

while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

- (1) Class A. -- A Class A license authorizes the holder to drive any of the following:
  - a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
  - b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- (2) Class B. -- A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
- (3) Class C. -- A Class C license authorizes the holder to drive any of the following:
  - a. A Class C motor vehicle that is not a commercial motor vehicle.
  - b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 30 days after becoming a resident.

(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have a drivers license and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(b) Repealed by Session Laws 1993, c. 368, s. 1, c. 533, s. 12, effective January 1, 1995.

~~(c)~~ ~~(b1)~~ Application and Tests. Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its

~~authenticity. To authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required. The Division shall note an endorsement on the face of a drivers license.~~

The application form must request all of the following information:

- (1) The applicant's full name.
- (2) The applicant's mailing address and residence address.
- (3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
- (4) The applicant's date of birth.
- (5) The applicant's social security number.
- (6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(c) Tests. -- To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral tests, and, in the case of literate applicants, written tests, as the Division may require. The tests must ensure that an applicant recognizes the handicapped international symbol of access, as defined in G.S. 20-37.5. The Division may not require a person who applies to renew a license that has not expired to take a written test or a road test unless one or more of the following applies:

- (1) The person has been convicted of a traffic violation since the person's license was last issued.
- (2) The applicant suffers from a mental or physical condition that impairs the person's ability to drive a motor vehicle.

The Division may not require a person who is at least 60 years old to parallel park a motor vehicle as part of a road test.

(c1) Insurance. -- The Division may not issue a drivers license to a person until the person has furnished proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

- (1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the

date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

- (2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term 'nonfleet private passenger motor vehicle' has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

The requirement of furnishing proof of financial responsibility does not apply to a person who applies for a renewal of his drivers license and who is not required to take the written examination.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) Repealed by Session Laws 1993, c. 368, s. 1, effective January 1, 1995.

(e) Restrictions. -- The Division may impose any restriction it finds advisable on a drivers license. ~~A restriction shall be noted on the face of the license.~~ It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) Expiration and Temporary License. -- The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's

twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed. A person may apply to the Division to renew a license during the 60-day period before the license expires. The Division may not accept an application for renewal made before the 60-day period begins.

Any person serving in the armed forces of the United States on active duty and holding a valid drivers license properly issued under this section and stationed outside the State of North Carolina may renew the license by making application to the Division by mail. Any other person, except a nonresident, who holds a valid drivers license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section 'temporarily' shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph otherwise required for the renewal of a drivers license, and may impose in lieu thereof any conditions it considers appropriate to each particular application. A license renewed by mail is a temporary license that expires 30 days after the person to whom it is issued returns to this State.

(g) Repealed by Session Laws 1979, c. 667, s. 6.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

(i) Fees. -- The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

<u>Class of Regular License</u>	<u>Fee For Each Year</u>
Class A	\$ 3.75
Class B	3.75
Class C	2.50

The fee for a motorcycle endorsement is one dollar and twenty-five cents (\$1.25) for each year of the period for which the endorsement is issued. The appropriate fee must be paid before a person receives a regular drivers license or an endorsement.

(1) Restoration Fee. -- Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars (\$25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars (\$50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds five million dollars (\$5,000,000), and shall pay a restoration fee of twenty-five dollars (\$25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose



license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar (\$25.00) fee, and the first twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds five million dollars (\$5,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of five million dollars (\$5,000,000).

(j) Highway Fund. -- The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(k) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(l) Learner's Permit. -- Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain a drivers license under this Article may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ten dollars (\$10.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder.

(l-1) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(m) Instruction Permit. -- The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to any of the following applicants:

- (1) An applicant who is less than 18 years old and is enrolled in a drivers education program that is approved by the State Superintendent of Public Instruction and is offered at a public high school, a nonpublic secondary school, or a licensed drivers training school.
- (2) An applicant for certification under G.S. 20-218 as a school bus driver.

A restricted instruction permit authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division. The restrictions the Division may impose on a permit include restrictions to designated areas and highways and restrictions prohibiting operation except when an approved

instructor is occupying a seat beside the permittee. A restricted instruction permit is not required to have a distinguishing number or a picture of the person to whom the permit is issued.

(n) ~~Format. -- Every A drivers license issued by the Division shall bear thereon the distinguishing number assigned to the licensee and color photograph of the licensee of a size approved by the Commissioner and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon; provided the must be tamperproof and must contain all of the following information:~~

- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) The license holder's social security number or another identifying number assigned by the Division.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement that of a color photograph of the licensee appear on the a license may be waived by the Commissioner upon satisfactory proof if the license holder proves to the satisfaction of the Commissioner that the taking of such the photograph violates would violate the license holder's religious convictions of the licensee. Drivers licenses shall be issued with differing color photographic backgrounds according to the licensee's age at time of issuance for the following age groups:

- (1) Persons who have not attained the age of 21 years.
- (2) Persons who have attained the age of 21 years.

convictions. In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds for each group. The Division shall determine the different colors to be used. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race.

(o) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991."

Sec. 2. G.S. 20-37.7 reads as rewritten:

"§ 20-37.7. *Special identification card.*

(a) Eligibility. -- The Division of Motor Vehicles shall upon satisfactory proof of identification issue a special identification card to any person 11

~~years or older who is a resident of the State of North Carolina. A person who is a resident of this State is eligible for a special identification card.~~

~~(b) Application. -- Every application for a special identification card shall be made on the approved form furnished by the Division and shall be accompanied by a birth certificate and other proof of identification which shall be returned when the special identification card is issued. To obtain a special identification card from the Division, a person must complete the application form used to obtain a drivers license.~~

~~(c) Format. -- Special A special identification cards shall be issued with differing color photographic backgrounds according to the holder's age at time of issuance for the following age groups:~~

~~(1) Persons who have not attained the age of 21 years.~~

~~(2) Persons who have attained the age of 21 years.~~

~~The card shall be similar in size, shape, and design to a driver's drivers license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle. A special identification card issued to an applicant must have the same background color that a drivers license issued to the applicant would have.~~

~~(d) Expiration and Fee. -- A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.~~

~~The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.~~

~~(e) Offense. -- Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a Class 2 misdemeanor.~~

~~(f) Records. -- The Division of Motor Vehicles shall maintain a record of all recipients of a special identification card. The Division may promulgate any rules and regulations it deems necessary for the effective implementation of the provisions of this section.~~

~~(g) No State Liability. -- The fact of issuance of a special identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.~~

~~(h) Advertising. -- The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section."~~

~~Sec. 3. G.S. 20-37.15(a) reads as rewritten:~~

~~"(a) The application for a commercial drivers license must include the following:~~

- (1) ~~The full name, current mailing address, and current residence address of the applicant;~~
- (2) ~~A physical description of the person including sex, height, and eye and hair color;~~
- (3) ~~Date of birth;~~
- (4) ~~The applicant's social security number;~~
- (5) ~~The applicant's signature;~~
- (6) ~~Repealed by Session Laws 1991, c. 726, s. 17.~~
- (7) ~~Certifications including those required by 49 C.F.R. § 383.71(a);~~
- (8) ~~A consent to release driving record information; and~~
- (9) ~~Any other information required by the Division.~~

An application for a commercial drivers license must include the information required by G.S. 20-7 for a regular drivers license and a consent to release driving record information."

Sec. 4. G.S. 20-37.16(a) reads as rewritten:

"(a) A commercial drivers license must be marked 'Commercial Drivers License' or 'CDL' and shall, ~~to the maximum extent practicable, be tamper proof. It must include:~~

- (1) ~~The person's name and residential address;~~
- (2) ~~The person's color photograph;~~
- (3) ~~A physical description of the person including sex, height, eye color, and hair color;~~
- (4) ~~The person's date of birth;~~
- (5) ~~The person's social security number or any number or identifier deemed appropriate by the Division;~~
- (6) ~~The person's signature;~~
- (7) ~~The class of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;~~
- (8) ~~The name of this State; and~~
- (9) ~~The dates between which the license is valid.~~

'CDL' and must contain the information required by G.S. 20-7 for a regular drivers license."

Sec. 5. G.S. 20-52(a) reads as rewritten:

"(a) ~~Every~~ An owner of a vehicle subject to registration hereunder shall make application to the Division for the registration thereof and issuance of must apply to the Division for a certificate of title for such vehicle upon the appropriate form or forms furnished by the Division, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain: title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application form provided by the Division. The application form must request all of the following information and may request other information the Division considers necessary:

- (1) ~~The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation; owner's name.~~
- (1a) If the owner is an individual, the following information:



- a. The owner's mailing address and residence address.
- b. The owner's social security number.
- (1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.
- (2) A description of the vehicle, including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the including the following:
  - a. The make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether and vehicle identification number of the vehicle.
  - b. Whether the vehicle is new or used, and used and, if a new vehicle, the date of sale and actual date of delivery of vehicle by the manufacturer or dealer to the person intending to operate such vehicle; the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.
- (3) A statement of the applicant's owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien; lien.
- (4) Such further information as may reasonably be required by the Division to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii)."

**Sec. 6.** G.S. 20-37.16(c) reads as rewritten:

"(c) The endorsements required to drive certain motor vehicles are as follows:

Endorsement

Vehicles That Can Be Driven

- H Vehicles carrying hazardous materials, other than tank vehicles
- L Double trailers that are longer combination vehicles
- M Motorcycles
- N Tank vehicles not carrying hazardous materials
- P Vehicles carrying passengers
- T Double trailers other than longer combination vehicles
- X Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a written test. This requirement applies when a person first obtains an H or an X



endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a ~~written~~ test unless the person has passed a ~~written~~ test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years."

**Sec. 7.** Sections 1 through 5 of this act become effective January 1, 1995. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 2036

## CHAPTER 751

## AN ACT TO PROVIDE THAT PAMLICO COUNTY MAY JOIN THE GLOBAL TRANSPARK DEVELOPMENT ZONE.

Whereas, in 1993, the General Assembly authorized the following 14 counties to create a regional economic development district to be known as the Global TransPark Development Zone: Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, New Hanover, Onslow, Pamlico, Pitt, Wayne, and Wilson; and

Whereas, in order to create the Zone, each county was required to adopt a resolution to that effect by October 1, 1993; and

Whereas, Pamlico County did not adopt a resolution by the October 1, 1993, deadline but has since adopted a resolution stating its desire to join the Zone; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 158-31 reads as rewritten:

"§ 158-31. *Purpose.*

The purpose of this Article is to allow the following counties, which have the potential to derive direct economic benefits from the North Carolina Global TransPark, to create a special economic development district, to be known as the Global TransPark Development Zone: Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, ~~New Hanover~~, Onslow, Pamlico, Pitt, Wayne, and Wilson.

The purpose of the Global TransPark Development Zone is to promote the development of the North Carolina Global TransPark and to promote and encourage economic development within the territorial jurisdiction of the Zone by fostering or sponsoring development projects to provide land, buildings, facilities, programs, information and data systems, and infrastructure requirements for business and industry in the North Carolina Global TransPark outside of the Global TransPark Complex, and elsewhere in the Zone."

**Sec. 2.** Article 4 of Chapter 158 of the General Statutes is amended by adding a new section to read:

" 158-33.1. *Addition of counties to Zone.*

(a) Authority. -- The Zone shall allow an eligible county to participate in the Zone as provided in this section. A county is eligible to participate in the Zone under this section if G.S. 158-31 authorizes the county to create

the Zone, but the county failed to adopt a resolution stating its intent to create the Zone by the October 1, 1993, deadline set in G.S. 158-33(b).

(b) Application. -- The governing body of an eligible county may apply to participate in the Zone under this section by adopting a resolution to participate in the Zone. The resolution must comply with all the requirements of G.S. 158-33(a) and (b) except that it may be adopted at any time before October 1, 1994. After adopting the resolution, the county shall file a certified copy of the resolution with the Global TransPark Development Commission.

(c) Approval of Application. -- Within one month after receipt of an application to join the Zone pursuant to this section, the Commission shall meet to consider the application. At the meeting, the Commission shall approve the application if all of the following conditions are met:

- (1) The applicant is an eligible county and has adopted a resolution that complies with subsection (b) of this section.
- (2) The applicant agrees to pay a fee equal to the initiation fee paid by each of the counties that originally created the Zone.
- (3) The applicant agrees to make monthly payments in lieu of taxes as provided in subsection (f) of this section.

(d) Commission Resolution. -- After the Commission votes to add a county to the Zone, the Commission shall adopt a resolution that states its intent to add the county and includes amended articles of incorporation for the Zone which set forth the name of the county to be added to the Zone. The Commission shall file certified copies of this resolution with the Secretary of State.

(e) Effect of Amendment. -- If the Secretary of State finds that the resolution conforms to the requirements of this Article, the Secretary of State shall file the resolution, issue an amended certificate of incorporation for the Zone including the additional county, and record the amended certificate of incorporation. The amended certificate of incorporation for the Zone shall become effective on the first day of the second month after it is issued. Upon the effective date of the amended certificate of incorporation for the Zone, the new county becomes a fully participating member of the Zone. If the Commission has levied a tax in the Zone pursuant to G.S. 158-42, that tax applies within the new county beginning on the date the amended certificate of incorporation becomes effective.

(f) Payments in Lieu of Taxes. -- A county that participates in the Zone under this section is required to make monthly payments in lieu of taxes to the Zone after the expiration of the tax levied pursuant to G.S. 158-42. Each payment shall be equal to the estimated net amount of tax that would have been collected in the county under G.S. 158-42 for that month if the tax were still in effect. Each payment is due within 15 days after the end of the month in which it accrues. The county is required to make monthly payments for a period equal to the number of months that the county was not participating in the Zone while the tax was levied under G.S. 158-42. The requirement that a county make payments in lieu of taxes expires, however, on the effective date of a withdrawal from the Zone by the county. For the purposes of this Article, payments in lieu of taxes shall be

considered proceeds of the tax levied in G.S. 158-42 collected in the county making the payment."

Sec. 3. G.S. 158-42(d) reads as rewritten:

"(d) Administration. -- The Division of Motor Vehicles of the Department of Transportation shall collect and administer a tax levied under this section. Immediately after adopting a resolution levying or repealing a tax under this section, the Commission shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the Secretary of State issues an amended certificate of incorporation adding a county to the Zone pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy of the amended certificate immediately to the Division of Motor Vehicles. If the Commission receives a resolution from a county withdrawing from the Zone pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution immediately to the Division of Motor Vehicles.

~~The tax~~ A tax levied under this section is due at the same time and subject to the same restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in accordance with G.S. 20-66 and G.S. 20-95, as applicable. The Commissioner of Motor Vehicles may adopt rules necessary to administer the tax."

Sec. 4. (a) G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than five dollars (\$5.00) per year upon any vehicle resident therein. In addition, Pamlico County may levy a license or privilege tax of five dollars (\$5.00) per year upon any vehicle resident in the county. This tax may be levied only for a period of one year. Pamlico County shall use the net proceeds of the tax to make required payments in lieu of taxes to the Global TransPark Development Zone pursuant to G.S. 158-33.1. Pamlico County may use the remainder of the tax proceeds not needed for payments required pursuant to G.S. 158-33.1 for any public purpose. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab."

(b) This section applies only to Pamlico County.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 1988

## CHAPTER 752

AN ACT TO INCORPORATE THE TOWN OF NEUSE FOREST,  
SUBJECT TO A REFERENDUM.

*The General Assembly of North Carolina enacts:*

**Section 1.** A Charter for the Town of Neuse Forest is enacted to read:

**"CHARTER OF THE TOWN OF NEUSE FOREST.**

**"CHAPTER I.**

**"INCORPORATION AND CORPORATE POWERS.**

"Section 1.1. *Incorporation.* The citizens of the area described in Chapter II of this Charter shall be and constitute a body politic and corporate under the name of 'Town of Neuse Forest' and shall have all the powers, authority, rights, privileges, and immunities conferred upon municipal corporations by the Constitution and general laws of North Carolina.

**"CHAPTER II.**

**"CORPORATE BOUNDARIES.**

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town are:

Being all of Township Number Seven (7) lying and being situate in Craven County, North Carolina, **WITH THE EXCEPTION OF** the property known as 'Weyerhaeuser's Craven 32' and with the exception of other property described in this section.

Township Number Seven (7) is more perfectly described as follows:

Point of beginning; at the mouth of Reedy Branch and the centerline of the Trent River. Reedy Branch is the County Line for Jones and Craven Counties and Reedy Branch flows into the south side of the Trent River, approximately 4.6 miles up the Trent River from the high rise US 70 bridge; thence, down the Trent River to the intersection of the Neuse River; thence, following the southerly shore line of the Neuse River, down the Neuse River to the centerline of Otter Creek; thence, up the center of Otter Creek to the intersection of a canal; thence, from this intersection, up the center of the canal to the existing US 70 right-of-way; thence, in an extended direction approximately 50 feet to the centerline of US 70, this point is approximately 70 feet east of the intersection of Catfish Road centerline and US 70 centerline; thence in a westerly direction along the centerline of US 70 right-of-way to the intersection of Fisher Road (SR 1104); thence, southerly from the centerline of US 70 right-of-way, along the center of Fisher Road (SR 1104) right-of-way to the intersection of the center of the County Line Road (SR 1101); thence, following the centerline of the County Line Road west to the center of Reedy Branch, which is the County Line between Jones and Craven Counties; thence, down the center of Reedy Branch to the centerline of the Trent River, point of beginning.

**SAVING AND EXCEPTING FROM THE ABOVE DESCRIPTION** the following property delineated as Weyerhaeuser's Craven 32 and the Register Parcel more particularly described as follows:

All that certain tract or parcel of land lying and being in Township No. 7, Craven County, North Carolina and being more particularly described as follows:

Beginning at a concrete marker now or formerly W. G. Taylor's southwest corner on the east shore of Brice's Creek at a point 12012 feet more or less northwardly along the shore of said creek from the mouth of the run of Boleyn Swamp and said point of beginning being more particularly defined

as being 9500 feet more or less from the shoreline at Wards Point, the closest land within the corporate limits of the City of New Bern, thence, from said point of beginning with and along the Taylor's line North 86 degrees East 1268 feet more or less; then due East 465 feet more or less; thence North 86 degrees East 355 feet more or less; thence North 86 degrees 20 minutes East 1188 feet more or less to a concrete marker in the west edge of the right of way of the Old New Bern to Morehead Road; (now SR 1111); thence leaving the line of W. G. Taylor and running along the west side of said road right of way South 3 degrees 30 minutes West 1155 feet more or less to a concrete marker in the center of a ditch, thence crossing the Old New Bern to Morehead Road (now SR 1111) and up the center of said ditch with H. Wooten's line North 65 degrees 30 minutes East 241 feet more or less; thence South 76 degrees 15 minutes East 660 feet more or less; thence South 74 degrees 15 minutes East 901 feet more or less to a concrete marker in the west side of an old road; thence with the west side of said road North 13 degrees 20 minutes East 1626 feet more or less to H. Wooten's northeast corner in the west side of said road; thence North 86 degrees 30 minutes East 30 feet more or less to a corner marker, now or formerly T. A. Grantham's northwest corner; thence with Grantham's line South 24 degrees 15 minutes East 1673 feet more or less to a concrete marker, a corner of said Grantham; thence with Grantham's line North 56 degrees East 825 feet more or less to a concrete marker in the west edge of the right of way of the Atlantic & North Carolina Railroad; thence with the edge of said right of way South 19 degrees 20 minutes East 1551 feet more or less to a new point cornering; thence across the right of way of the Atlantic and North Carolina Railroad North 69 degrees 44 minutes 39 seconds East 100.02 feet to an iron pipe the northwesterly corner of the Weyerhaeuser Real Estate Company, formerly the Evelyn C. Register property; thence North 69 degrees 44 minutes 39 seconds East 380.98 feet to an iron pipe in the westerly right of way U.S. Highway 70 cornering; thence with and along the westerly right of way of U.S. Highway 70 South 20 degrees 15 minutes 21 seconds East 400 feet to an iron pipe cornering; thence South 61 degrees 49 minutes 39 seconds West 392.03 feet to an iron pipe in the easterly right of the Atlantic and North Carolina Railroad; thence continuing across the Atlantic and North Carolina Railroad South 61 degrees 49 minutes 39 seconds West 101.20 feet to a point in the westerly right of way of said railroad cornering; thence with and along the westerly right of way of the Atlantic and North Carolina Railroad South 19 degrees 20 minutes East 2079 feet more or less to a concrete marker, now or formerly a corner of J.S. McGowan; thence leaving said railroad right of way South 66 degrees 25 minutes West 313 feet more or less to a poplar and iron pipe, a corner of said McGowan; thence North 38 degrees 10 minutes West 785 feet more or less to a granite marker; thence South 62 degrees 30 minutes West 132 feet more or less to a concrete marker in the run of Boleyn Swamp, a corner of J. S. McGowan; thence down the run of Boleyn Swamp westwardly with line of J. S. McGowan across SR 1111 and with the line now or formerly T. A. Grantham 6732 feet more or less to Brice's Creek; thence down the east shore of said creek northwardly 12012 feet more or less to the beginning, containing 1043.1 acres more or less.



The above parcel is recorded in Deed Book 348 Page 6; Deed Book 621 Page 2; Deed Book 1399 Page 920; Map Book 1 Page 144, and Plat Cabinet F Slide 157-H of the Craven County Register of Deeds.

SAVING AND EXCEPTING from the above description of the area proposed to be incorporated as the Town of Neuse Forest the following property:

**DESCRIPTION OF PROPERTY ADJOINING WEYERHAEUSER'S  
CRAVEN 32**

All that certain tract or parcel of land lying and being in Township No. 7, Craven County, North Carolina and being more particularly described as follows:

BEGINNING at an existing iron pipe a common corner between J.W. Browns, Jr. and Weyerhaeuser Company in the Sellhorn line, said existing iron pipe being located N 88° 14'48" E 1,173.75 feet from the center of North Carolina Secondary Road No. 1111, thence from said point of beginning N 88° 14'E 860.89 feet to a point cornering; thence with the new corporate limits and the Old Beaufort Road S 15° 35' W 1347.22 feet and S 14°46'W276.77 feet to a point cornering; thence continuing with the new corporate limits N72°46'W887.08 feet to the intersection with a ditch, thence leaving the corporate limits with and along a ditch N 32°20' E 188.50 feet, N 18°54' E 236.19 feet and N 15°54' E 190.71 feet to a point; thence leaving said ditch N 14°57'35" E 734.74 feet to an existing iron pipe, the point of beginning, containing 28.04 acres more or less.

The above referenced parcel is the remainder of tract conveyed by P.T. Huggins to Weyerhaeuser Company and recorded in Deed Book 867 Page 353 of the Craven County Register of Deeds.

SAVING AND EXCEPTING from the above description of the area proposed to be incorporated as the Town of Neuse Forest the following property:

**DESCRIPTION OF WEYERHAEUSER'S  
ACCESS AREA FROM U. S. HIGHWAY 70**

All that certain tract or parcel of land lying and being in Township No. 7, Craven County, North Carolina and being more particularly described as follows:

BEGINNING at a point in the westerly right of way of the Atlantic and North Carolina Railroad also a corner in the new corporate limit; thence with the new corporate limits across the Atlantic and North Carolina Railroad N 61° 49'39" East 100.2 feet to an iron pipe in the easterly right of way of the Atlantic and North Carolina Railroad; thence continuing N 61° 49'39" East 392.03 feet to an iron pipe in the westerly right of way of U. S. Highway 70 cornering; thence along the westerly right of way of U.S. Highway 70 South 20° 15'21" East 50.0 feet and South 20° 15'21" East 200.0 feet to an iron pipe cornering; thence South 54° 55'39" West 405.91 feet to a point in the easterly right of way of the Atlantic and North Carolina Railroad, thence across the Atlantic and North Carolina Railroad North 54° 55'39" West 103.87 feet to a point in the westerly right of way of the Atlantic and North Carolina Railroad, the new corporate limits cornering; thence with and along the westerly right of way of the Atlantic and North

Carolina Railroad and the new corporate limits North 19° 20'00" West 312.44 feet to the point of beginning containing 3.17 acres more or less.

The above referenced parcel is a combination of tracts conveyed to Luther W. Gibson in Deed Book 622 Page 120 and Deed Book 884 Page 719 of the Craven County Register of Deeds together with the adjoining right of way of the Atlantic and North Carolina Railroad.

If any area included by this section in the corporate limits of the Town of Neuse Forest is in the corporate limits of any other city, it is removed from the corporate limits of that other city.

#### "CHAPTER III.

#### "GOVERNING BODY.

"Sec. 3.1. **Number of Members.** The governing body shall be a Town Council of five members, one of whom shall be elected Mayor as provided in Section 3.4 herein.

"Sec. 3.2. **Manner of Election of Council.** The Town shall be divided into five electoral districts. The districts for the 1997 and subsequent elections shall be provided by the council elected initially. Districts shall be established pursuant to all applicable federal and State constitutional and statutory provisions, including the Voting Rights Act of 1965. To the extent feasible within those requirements, districts shall be established approximately by areas of the Town that would generally represent a cross section of the community within that district. The qualified voters of each district shall elect one member of the board from that district. A council member shall reside in the district in which said member represents.

"Sec. 3.3. **Term of Office of Council.** The initial council shall be elected and serve until the five council members are elected for two-year terms at the regular Town election in November of 1997 and biennially thereafter. No member may be elected to the council to more than two consecutive terms, and any person barred from election to the council may not be appointed to fill a vacancy during the term for which that person may not be elected.

"Sec. 3.4. **Mayor.** At the organizational meeting after each election, the council shall elect from among its membership a Mayor to serve at its pleasure.

#### "CHAPTER IV.

#### "ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** The Town officers shall be elected on a nonpartisan basis, and the results determined by majority, with a runoff election if necessary, as provided in G.S. 163-293. Elections shall be conducted by the Craven County Board of Elections.

"Sec. 4.2. **Interim Budget.** The Town Council may adopt a budget ordinance for the 1994-95 fiscal year, following their qualifications for office, without having to comply with the budget preparation and adoption timetable set out in the Local Government Budget and Fiscal Control Act. For the initial budget for the 1994-95 fiscal year, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget, and thereafter according to the schedule in G.S. 105-360 as if the taxes had been due on September 1, 1994.

**"CHAPTER V.****"ADMINISTRATION.**

**"Sec. 5.1.** The Town of Neuse Forest shall operate under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

**Sec. 2.** (a) The Craven County Board of Elections shall conduct an election on November 8, 1994, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Neuse Forest, the question of whether or not such area shall be incorporated as the Town of Neuse Forest. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the questions on the ballot shall be:

"[ ] FOR incorporation of the Town of Neuse Forest

[ ] AGAINST incorporation of the Town of Neuse Forest".

**Sec. 3.** In the election, if a majority of the votes are cast "FOR incorporation of the Town of Neuse Forest", this Charter shall become effective on the date that the Craven County Board of Elections determines the result of the election of the initial Town Council under Section 4 of this act. Otherwise, Section 1 of this act shall have no force and effect.

**Sec. 4.** On November 8, 1994, the initial Town Council shall be elected as provided by the Charter, but if Section 1 of this act does not become effective, the election has no effect. The initial districts for the Town Council for the 1994 election shall be provided by the Craven County Board of Commissioners. Districts shall be established pursuant to all applicable federal and State constitutional and statutory provisions, including the Voting Rights Act of 1965. To the extent feasible within those requirements, districts shall be established approximately by areas of the town that would generally represent a cross section of the community within that district. The Craven County Board of Commissioners shall establish a special filing period for the election after consultation with the Craven County Board of Elections.

**Sec. 5.** If approval of this act does not occur such that either of the elections scheduled by Sections 2 and 4 of this act may be held on November 8, 1994, the Craven County Board of Elections may provide a later date for either of the elections, but not earlier than 30 days after that date.

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 486

**CHAPTER 753**

**AN ACT TO PLACE RESTRICTIONS ON THE USE OF PERSONAL WATERCRAFT SUCH AS JET SKIS AND WATER BIKES, AND TO RESTRICT CERTAIN ACTIVITIES IN WATERS SURROUNDING ELECTRIC GENERATING FACILITIES.**

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 75A of the General Statutes is amended by adding a new section to read:

"§ 75A-13.2. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between the hours from one hour after sunset to one hour before sunrise. For purposes of this section, 'personal watercraft' means a small class A-1 or A-2 vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) No person shall operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a personal flotation device approved by the United States Coast Guard.

(c) A personal watercraft must at all times be operated in a reasonable and prudent manner. Manuevers that endanger life, limb, or property, including:

- (1) Unreasonably or unnecessarily weaving through congested vessel traffic;
- (2) Jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed; and
- (3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision

shall constitute reckless operation of a vessel as provided in G.S. 75A-10.

(d) The provisions of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14."

**Sec. 2.** G.S. 75A-2 is amended by adding a new subsection to read:

"(7) 'Electric generating facility' means any plant facilities and equipment for the purposes of producing, generating, transmitting, delivering or furnishing electricity for the production of power."

**Sec. 3.** G.S. 75A-15 is amended by adding a new subsection to read:

"(e) The Wildlife Resources Commission may adopt rules prohibiting entry or use by vessels or swimmers of waters of the State immediately surrounding impoundment structures and powerhouses associated with electric generating facilities that are found to pose a hazard to water safety. This subsection shall not apply to the Person-Caswell Lake Authority, Carolina Power and Light Company Lake (Hycos)."

**Sec. 4.** This act becomes effective August 1, 1994, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

## MAKE TECHNICAL CHANGES IN THE VEHICLE INSPECTION LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Part 2 of Article 3A of Chapter 20 of the General Statutes reads as rewritten:

**"Part 2. Equipment Inspection of Motor Vehicles.  
Safety and Emissions Inspections of Certain Vehicles.**

**"§ 20-183.2. ~~Equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station.~~ Description of vehicles subject to safety or emissions inspection; definitions.**

**(a) Safety.** -- A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:

- (1) It is subject to registration with the Division under Article 3 of this Chapter.**
- (2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.**
- (3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.**

**(b) Emissions.** -- A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

- (1) It is subject to registration with the Division under Article 3 of this Chapter.**
- (2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.**
- (3) It is a 1975 or later model.**
- (4) It is powered or designed so that it could be powered by gasoline.**
- (5) It meets any of the following descriptions:**
  - a. It is required to be registered in an emissions county.**
  - b. It is part of a fleet that is operated primarily in an emissions county.**
  - c. It is offered for rent in an emissions county.**
  - d. It is offered for sale by a dealer in an emissions county.**
  - e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.**
  - f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.**

**(c) Definitions.** -- The following definitions apply in this Part:

- (1) Emissions county.** -- A county in which the State either is required by federal law to conduct emissions testing or has agreed in its State Implementation Plan submitted to the federal Environmental Protection Agency to conduct emissions testing. The State Environmental Management Commission establishes the emissions counties pursuant to rules adopted under G.S. 143-215.107(a)(6).



(2) Federal installation. -- An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency.

~~(a) Every motor vehicle, trailer, semitrailer, and pole trailer not including trailers of a gross weight of less than 4,000 pounds and house trailers, registered or required to be registered in North Carolina when operated on the streets and highways of this State must display a current approved State or federal inspection certificate as required by the Federal Motor Carrier Safety Regulations at such place on the vehicle as may be designated by the Commissioner, indicating that it has been inspected in accordance with this Part. Gasoline-powered vehicles over 26,001 pounds shall be subject to emission control device and exhaust emission testing required under G.S. 20-128.2. Such motor vehicle shall thereafter be inspected and display a current inspection certificate as is required by subsection (b) hereof.~~

~~(b) Every inspection certificate issued under this Part shall be valid for not less than 12 months and shall expire at midnight on the last day of the month designated on said inspection certificate. It shall be unlawful to operate any motor vehicle on the highway until there is displayed thereon a current inspection certificate as provided by this Part, indicating that the vehicle has been inspected within the previous 12 months and has been found to comply with the standard for safety equipment prescribed by this Chapter subject to the following provisions:~~

- ~~(1) Vehicles of a type required to be inspected under subsection (a), which are owned by a resident of this State, that have been outside of North Carolina continuously for a period of 30 days, or more, immediately preceding the expiration of the then current inspection certificate shall within 10 days of reentry to the State be inspected and have an approved certificate attached thereto if vehicle is to continue operation on the streets and highways.~~
- ~~(2) Any vehicle owned or possessed by a dealer, manufacturer or transporter within this State and operated over the public streets and highways displaying thereon a dealer demonstration, manufacturer or transporter plate must have affixed to the windshield thereof a valid certificate of inspection and approval, except a dealer, manufacturer or transporter or his agent may operate a motor vehicle displaying dealer demonstration, manufacturer or transporter plates from source of purchase to his place of business or to an inspection station, provided it is within 10 days of purchase, foreclosure or repossession. Provided further, that a new car dealer may operate a new motor vehicle prior to first sale for customer demonstration purposes only without affixing thereto an inspection certificate as required by this section if such dealer causes an inspection of the equipment enumerated in G.S. 20-183.3 to be made and affixes on the window of the vehicle adjacent to the manufacturer's price list a certificate as near as practical in form and content as follows:~~

~~Dealer.....  
 Dealer license number.....  
 Vehicle make..... Year model.....~~

<del>Vehicle identification number.....</del>	
<del>Equipment Item</del>	<del>Check square when inspected and approved</del>
<del>Brakes</del>	<del><input type="checkbox"/></del>
<del>Lights</del>	<del><input type="checkbox"/></del>
<del>Horn</del>	<del><input type="checkbox"/></del>
<del>Steering Mechanism</del>	<del><input type="checkbox"/></del>
<del>Windshield Wiper</del>	<del><input type="checkbox"/></del>
<del>Directional Signals</del>	<del><input type="checkbox"/></del>
<del>Tires</del>	<del><input type="checkbox"/></del>
<del>Rear View Mirror</del>	<del><input type="checkbox"/></del>
<del>Exhaust System</del>	<del><input type="checkbox"/></del>

~~I certify that the above items of equipment have been  
inspected and found to be in good working order.~~

~~.....  
Dealer or Agent~~

- ~~(3) Vehicles acquired by residents of this State from dealers or owners located outside of the State must, upon entry to this State, be inspected and approved, certificate attached, within 10 days after the vehicle becomes subject to registration.~~
- ~~(4) Vehicles acquired by residents within this State, not displaying current North Carolina inspection certificates, must be inspected and have approved inspection certificate attached within 10 days from date registration plate issued or if registration plate is to be transferred, within 10 days of the date of purchase.~~
- ~~(5) Owners of motor vehicles moving their residence to North Carolina from other states must within 10 days from the date the vehicles are subject to registration have same inspected and have an approved certificate attached thereto.~~
- ~~(6) The Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant special written one-way permits to operate motor vehicles without current inspection certificates solely for the purpose of moving such vehicles to an authorized inspection station to obtain the inspection required under this Part.~~
- ~~(7) Vehicles which are base plated in North Carolina under the International Registration Plan but which are stationed in another jurisdiction shall be permitted to operate in North Carolina on their initial trip into North Carolina without displaying a valid inspection certificate.~~

~~(c) On and after February 16, 1966, all motor vehicle dealers in North Carolina shall, prior to retail sale of any new or used motor vehicle, have such motor vehicle inspected by an approved inspection station as required by this Part. Provided, however, a purchaser of a motor vehicle, who is licensed as a self-inspector, may conduct the required inspection, after entering into a written agreement with the dealer to follow such a procedure. A copy of such dealer purchaser agreement must be filed with the Division of Motor Vehicles. Provided further, that any new and unregistered vehicle sold to a nonresident (as defined in G.S. 20-6) shall be exempt from the~~

~~requirements of this section if such vehicle is not required to be registered in this State. Provided further, that motor vehicles sold by public auction dealers meet the inspection requirements of this subsection if they have a current North Carolina inspection sticker less than 90 days old displayed at the time of sale.~~

~~(d) When a motor vehicle required to be inspected under this Part shall, upon inspection, fail to meet the safety requirements of this Part, the safety equipment inspection station making such inspection, shall issue an authorized receipt for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator may have such defects corrected at such place as he or she chooses. The vehicle may be reinspected at the safety equipment inspection station, first making the inspection, without additional charge, or the owner or operator may have same inspected at another safety equipment station upon payment of a new inspection fee.~~

~~(e) On and after January 1, 1974, each motor vehicle safety inspection certificate shall contain, on the portion readable from the vehicle interior, the following information:~~

- ~~(1) The date of the current inspection;~~
- ~~(2) The odometer reading at the time of the current inspection;~~
- ~~(3) The signature, initials or other identification of the person making the inspection and affixing the certificate to the windshield.~~

~~"§ 20-183.3. Inspection requirements. Scope of safety inspection and emissions inspection.~~

~~(a) Safety. -- Before an approval certificate may be issued for a motor vehicle, the vehicle must be inspected by a safety equipment inspection station, and if required by Chapter 20 of the General Statutes of North Carolina, must be found to possess in safe operating condition the following articles and equipment: A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:~~

- ~~(1) Brakes, as required by G.S. 20-124.~~
- ~~(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.~~
- ~~(3) Horn, as required by G.S. 20-125(a).~~
- ~~(4) Steering mechanism, as required by G.S. 20-123.1.~~
- ~~(5) Windshield wiper, Windows and windshield wipers, as required by G.S. 20-127.~~
- ~~(6) Directional signals, as required by G.S. 20-125.1.~~
- ~~(7) Tires, as required by G.S. 20-122.1.~~
- ~~(8) Rearview mirror or mirrors, Mirrors, as required by G.S. 20-126.~~
- ~~(9) Exhaust system, system, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emission-control devices is included in the emissions inspection rather than the safety inspection.~~

~~No inspection certificate shall be issued by a safety equipment inspection station for a motor vehicle manufactured after model year 1967 unless the vehicle is equipped with such emission control devices to reduce air~~

~~pollution as were installed at the time of manufacture which are readily visible, provided the foregoing requirements shall not apply where such devices have been removed for the purpose of converting the motor vehicle to operate on natural or liquified petroleum gas. Other modifications of emission control devices shall be approved by the Environmental Management Commission before an inspection certification is issued.~~

~~The inspection requirements herein provided for shall not exceed the standards provided in the current General Statutes for such equipment.~~

~~(b) Emissions. -- When required pursuant to G.S. 20-128.2, and as a condition for approval certificate issuance under subsection (a) of this section, emission control devices and exhaust emissions shall be inspected and shall comply with those standards established pursuant to G.S. 20-128.2 on 1975 and later model gasoline-powered vehicles excluding the current year model and, to this end, the Commissioner of Motor Vehicles is authorized to adopt and enforce such rules and regulations as may be necessary to carry out the intent and purpose of this section. Provided that motorcycles as defined in G.S. 20-4.01(22) and G.S. 20-4.01(27)d shall not be subject to the requirements of this subsection. An emissions inspection of a motor vehicle consists of a visual inspection of the vehicle's emission control devices to determine if the devices are present, are properly connected, and are the correct type for the vehicle and an analysis of the exhaust emissions of the vehicle to determine if the exhaust emissions meet the standards for the model year of the vehicle set by the Environmental Management Commission. To pass an emissions inspection a vehicle must pass both the visual inspection and the exhaust emissions analysis. When an emissions inspection is performed on a vehicle, a safety inspection must be performed on the vehicle as well.~~

~~(c) Reinspection After Failure. -- The scope of a reinspection of a vehicle that has been repaired after failing an inspection is the same as the original inspection unless the vehicle is presented for reinspection within 30 days of failing the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was a safety inspection, the reinspection is limited to an inspection of the equipment that failed the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was an emissions inspection, the reinspection is limited to the portion of the inspection the vehicle failed and any other portion of the inspection that would be affected by repairs made to correct the failure.~~

~~"§ 20-183.4. Licensing of safety equipment inspection stations. License required to perform safety inspection; qualifications for license.~~

~~(a) License Required. -- A safety inspection must be performed by one of the following methods:~~

- ~~(1) At a station that has a safety inspection station license issued by the Division and by a mechanic who is employed by the station and has a safety inspection mechanic license issued by the Division.~~
- ~~(2) At a place of business of a person who has a safety self-inspector license issued by the Division and by an individual who has a safety inspection mechanic license issued by the Division.~~



(b) Station Qualifications. -- An applicant for a license as a safety inspection station must meet all of the following requirements:

- (1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection.
- (2) Regularly employ at least one mechanic who has a safety inspection mechanic license.

(c) Mechanic Qualifications. -- An applicant for a license as a safety inspection mechanic must meet all of the following requirements:

- (1) Have successfully completed an eight-hour course approved by the Division that teaches students about the safety equipment a motor vehicle is required to have to pass a safety inspection and how to conduct a safety inspection.
- (2) Have a drivers license.
- (3) Be of good character and have a reputation for honesty.

(d) Self-Inspector Qualifications. -- An applicant for a license as a safety self-inspector must meet all of the following requirements:

- (1) Operate a fleet of at least 10 vehicles that are subject to a safety inspection.
- (2) Regularly employ or contract with an individual who has a safety inspection mechanic license and who will perform a safety inspection on the vehicles that are part of the self-inspector's fleet.

~~Every person, firm or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:~~

- ~~(1) Be of good character and have a good reputation for honesty.~~
- ~~(2) Have adequate knowledge of the equipment requirements of the motor vehicle laws of North Carolina.~~
- ~~(3) Be able to satisfactorily conduct the mechanical inspection required by this Part.~~
- ~~(4) Have adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein.~~
- ~~(5) Have a general knowledge of motor vehicles sufficient to recognize a mechanical condition which is not safe.~~

~~Any person, firm or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the Commissioner of Motor Vehicles on forms provided by the Commissioner. The Commissioner shall cause an investigation to be made as to the applicant's qualifications, and if, in the opinion of the Commissioner, the applicant fulfills such qualifications, he shall issue a certificate of appointment to such person, firm or agency as a safety equipment inspection station. Such appointment shall be issued without charge and shall be effective until canceled by request of licensee or until revoked or suspended by the Commissioner. Any licensee whose license has been revoked or suspended or any applicant whose application has been refused may, within 10 days from the notice of such revocation, suspension or refusal, request a hearing before the Commissioner and, in such cases, the hearing shall be conducted within 10 days of receipt of request for such hearing. The Commissioner, following such hearing, may rescind the order of suspension, revocation or the refusal to issue license, or he may affirm the~~



~~previous order of revocation, suspension or refusal. Any applicant or licensee aggrieved by the decision of the Commissioner may, following such decision, file a petition in the Superior Court of Wake County or in the county wherein applicant or licensee resides. Such petition shall recite the fact that the administrative remedy, as provided above, has been exhausted. Provided, that no restraining order shall issue against the Division of Motor Vehicles under this section until and unless the Division shall have had at least five days' notice of the petitioner's intention to seek such restraining order.~~

~~The Commissioner may designate the State or any political subdivision thereof or any person, firm or corporation as self inspectors for the sole purpose of inspecting vehicles owned or operated by such agencies, persons, firms, or corporations so designated.~~

"§ 20-183.4A. License required to perform emissions inspection; qualifications for license.

(a) License Required. -- An emissions inspection must be performed by one of the following methods:

- (1) At a station that has an emissions inspection station license issued by the Division and by a mechanic who is employed by the station and has an emissions inspection mechanic license issued by the Division.
- (2) At a place of business of a person who has an emissions self-inspector license issued by the Division and by an individual who has an emissions inspection mechanic license.

(b) Station Qualifications. -- An applicant for a license as an emissions inspection station must meet all of the following requirements:

- (1) Have a license as a safety inspection station.
- (2) Have an emissions analyzer approved by the Environmental Management Commission.
- (3) Have equipment to transfer information on emissions inspections to the Division by electronic means.
- (4) Regularly employ at least one mechanic who has an emissions inspection mechanic license.

(c) Mechanic Qualifications. -- An applicant for a license as an emissions inspection mechanic must meet all of the following requirements:

- (1) Have a license as a safety inspection mechanic.
- (2) Have successfully completed an eight-hour course approved by the Division that teaches students about the causes and effects of the air pollution problem, the purpose of the emissions inspection program, the vehicle emission standards established by the federal Environmental Protection Agency, the emission control devices on vehicles, how to conduct an emissions inspection using an emissions analyzer approved by the Environmental Management Commission, and any other topic required by 40 C.F.R. § 51.367 to be included in the course. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

(d) Self-Inspector Qualifications. -- An applicant for a license as an emissions self-inspector must meet all of the following requirements:

- (1) Have a license as a safety self-inspector.
- (2) Operate a fleet of at least 10 vehicles that are subject to an emissions inspection.
- (3) Have, or have a contract with a person who has, an emissions analyzer approved by the Environmental Management Commission.
- (4) Regularly employ or contract with an individual who has an emissions inspection mechanic license and who will perform an emissions inspection on the vehicles that are part of the self-inspector's fleet.

"§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.

(a) Application. -- An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. If the applicant does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

(b) Duration of License. -- A safety inspection mechanic license expires four years after the date it is issued. An emissions mechanic inspection license expires two years after the date it is issued. A safety inspection station license, an emissions inspection station license, and a self-inspector license are effective until surrendered by the license holder or suspended or revoked by the Division.

(c) Renewal of Mechanic License. -- A safety or an emissions inspection mechanic may apply to renew a license by filing an application with the Division on a form provided by the Division. To renew an emissions inspection mechanic license, an applicant must have successfully completed a four-hour emissions refresher course approved by the Division within nine months of applying for renewal. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

"§ 20-183.4C. When a vehicle must be inspected.

A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

- (1) A new vehicle must be inspected before it is offered for sale at retail in this State.
- (2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer at a location other than a public auction.
- (3) A used vehicle that is offered for sale at retail in this State by a dealer at a public auction must be inspected before it is offered for sale unless it has an inspection sticker that was put on the vehicle

under this Part and does not expire until at least nine months after the date the vehicle is offered for sale at auction.

- (4) A used vehicle acquired by a resident of this State from a person outside the State must be inspected within 10 days after the vehicle is registered with the Division.
- (5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected within 10 days after the vehicle is registered with the Division.
- (6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the inspection sticker on the vehicle expires, unless another subdivision of this section requires it to be inspected sooner.

"§ 20-183.4D. Procedure when a vehicle is inspected.

(a) Receipt. -- When a safety inspection mechanic or an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.

(b) Sticker. -- When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division. When a vehicle that is subject to both a safety inspection and an emissions inspection passes both inspections or passes the safety inspection and has a waiver for the emissions inspection, the emissions mechanic performing the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division.

(c) Content of Sticker. -- An inspection sticker issued for a vehicle that is subject to a safety inspection only must be a different color from an inspection sticker issued for a vehicle that is subject to both a safety and an emissions inspection. An inspection sticker must indicate when it expires, must be printed with a unique serial number and an official program seal, and must be counterfeit resistant. The side of an inspection sticker that is readable from the interior of a vehicle must contain the following information:

- (1) The date the inspection was performed.
- (2) The odometer reading when the inspection was performed.
- (3) The signature, initials, or other identification of the mechanic who performed the inspection and put the sticker on the windshield.

(d) When Sticker Expires. -- An inspection sticker put on a vehicle that did not have an inspection sticker issued under this Part when it was brought in for inspection expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle. An

inspection sticker put on a vehicle that had an inspection sticker that was put on under this Part when it was brought in for inspection expires as follows:

- (1) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is less than 12 full months from the date of the inspection, the inspection sticker expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle.
- (2) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is 12 or more months from the date of the inspection, the inspection sticker expires one year after the expiration date of the inspection sticker the vehicle had when it was brought in for inspection, regardless of whether there are 12 months in this period.

"§ 20-183.5. Supervision of safety equipment inspection stations. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.

When a person, firm or agency is designated as a safety equipment inspection station the Commissioner of Motor Vehicles shall record such appointment and shall cause periodic checks to be made to determine that inspections are being conducted in accordance with this Part, and shall cause investigations to be made of bona fide complaints received regarding any such inspection station. The Division shall conduct administrative audits.

(a) Requirements. -- The Division may issue a waiver for a vehicle that meets all of the following requirements:

- (1) Fails an emissions inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.
- (2) Has documented repairs costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is seventy-five dollars (\$75.00) if the vehicle is a pre-1981 model and is two hundred dollars (\$200.00) if the vehicle is a 1981 or newer model.
- (3) Is reinspected and again fails the inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.
- (4) Meets any other waiver criteria required by 40 C.F.R. § 51.360.

(b) Procedure. -- To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an inspection sticker.



(c) Repairs. -- The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

- (1) Repairs covered by a warranty that applies to the vehicle.
- (2) Repairs needed as a result of tampering with an emission control device of the vehicle.
- (3) If the vehicle is a 1981 or newer model, repairs made by an individual who is not engaged in the business of repairing vehicles.

(d) Sticker Expiration. -- An inspection sticker put on a vehicle after the vehicle receives a waiver from the requirement of passing the emissions inspection expires at the same time it would if the vehicle had passed the emissions inspection.

"§ 20-183.6. Commissioner of Motor Vehicles to establish procedures; unlawful possession, etc., of certificates. Businesses that replace windshields must register with Division to get inspection stickers.

(a) The Commissioner of Motor Vehicles shall establish procedures for the control, distribution, sale, refund, and display of certificates and for the accounting for proceeds of their sale, consistent with this Article. It shall be unlawful knowingly to possess, affix, transfer, remove, imitate or reproduce an inspection certificate, except by direction of the Commissioner of Motor Vehicles under the terms of this Article.

(b) Notwithstanding any other provision of this Article, those who replace windshields in motor vehicles shall place on the replacement windshield an inspection certificate having the same expiration date as the certificate attached to the windshield removed and shall retain the certificate attached to the windshield removed until 30 days after the expiration thereof. In addition to the authority granted in subsection (a), the Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this section.

A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced windshields. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was replaced and keep the removed inspection sticker until 30 days after it expires.

A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the Division may review the records of a person registered under this section during normal business hours.

"§ 20-183.6A. Administration of program; duties of license holders.



(a) Division. -- The Division is responsible for administering the safety inspection and the emissions inspection programs. In exercising this responsibility, the Division must:

- (1) Conduct performance audits, record audits, and equipment audits of those licensed to perform inspections to ensure that inspections are performed properly.
- (2) Ensure that Division personnel who audit license holders are knowledgeable about audit procedures and about the requirements of both the safety inspection and the emissions inspection programs.
- (3) Perform an emissions inspection on a vehicle when requested to do so by a vehicle owner so the owner can compare the result of the inspection performed by the Division with the result of an inspection performed at an emissions inspection station.
- (4) Investigate complaints about a person licensed to perform inspections and reports of irregularities in performing inspections.
- (5) Establish written procedures for the issuance of inspection stickers to persons licensed to perform inspections.
- (6) Submit information and reports to the federal Environmental Protection Agency as required by 40 C.F.R. Part 51.

(b) License Holders. -- A person who is licensed by the Division under this Part must post the license at the place required by the Division and must keep a record of inspections performed. The inspection record must identify the vehicle that was inspected, indicate the type of inspection performed and the date of inspection, and contain any other information required by the Division. A self-inspector or an inspection station must send its records of inspections to the Division in the form and at the time required by the Division. An auditor of the Division may review the inspection records of a person licensed by the Division under this Part during normal business hours.

~~"§ 20-183.7. Charges for inspections and certificates; safety equipment inspection station records. Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.~~

(a) Fee Amount. -- Every safety equipment inspection station shall charge a fee of six dollars and twenty five cents (\$6.25) effective October 1, 1990; and a fee of eight dollars and twenty five cents (\$8.25) effective October 1, 1993, for inspecting a motor vehicle to determine compliance with the safety inspection requirements of this Article and shall give the vehicle operator a dated receipt, indicating the articles and equipment approved and disapproved. At any time within 90 days thereafter, when the receipt is presented to the inspection station which issued it with a request for reinspection, that inspection station shall reinspect the vehicle at no charge. Whenever any vehicle is approved, the inspection station shall obtain an additional fee of one dollar (\$1.00) for a valid inspection certificate, and affix the certificate to that vehicle or otherwise document the issuance of the certificate in a manner prescribed by the Commissioner of Motor Vehicles. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
<u>Safety Only</u>	<u>\$8.25</u>	<u>\$1.00</u>
<u>Emissions and Safety</u>	<u>17.00</u>	<u>2.40.</u>

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

(a1) For inspection of vehicles required to be inspected under the inspection/maintenance provisions of G.S. 20-183.3(b), every safety equipment inspection station shall charge a fee of thirteen dollars (\$13.00) effective October 1, 1990; and a fee of seventeen dollars (\$17.00) effective October 1, 1993, for inspecting a motor vehicle to determine compliance with the safety inspection requirements and the exhaust emission standards pursuant to the inspection/maintenance requirements of this Article and shall give the vehicle operator a dated receipt indicating the articles and equipment approved or disapproved and whether the vehicle met the emission control standards. If the vehicle is disapproved, at any time within 30 days thereafter when the receipt is presented to the inspection station which issued it with a request for reinspection, that inspection station shall reinspect the vehicle at no charge. Whenever any vehicle is approved, the inspection station shall obtain an additional fee of two dollars and forty cents (\$2.40) for a valid inspection certificate covering both the safety inspection requirements and the emission control inspection/maintenance requirements and affix the certificate to that vehicle or otherwise document the issuance of the certificate in a manner prescribed by the Commissioner of Motor Vehicles.

(b) Self-Inspector. -- Self-inspector stations licensed under G.S. 20-183.4 are exempt from the inspecting fee provisions of subsection (a) above, but shall pay to the Division of Motor Vehicles the prescribed certificate fee for each inspection certificate issued by it. The fee for an inspection does not apply to an inspection performed by a self-inspector. The fee for putting an inspection sticker on a vehicle applies to an inspection performed by a self-inspector.

(c) Fee Distribution. -- Fees collected for inspection certificates stickers are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Emissions Program Account established in subsection (d) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Environmental Management of the Department of Environment, Health, and Natural Resources:

<u>Fund or Agency Recipient</u>	<u>Fee Imposed Under (a) Safety Only Sticker</u>	<u>Fee Imposed Under (a1) Emissions and Safety Sticker</u>
Highway Fund	.75	<u>1.80 .00</u>
Emissions Program Account	.00	1.80
Volunteer Rescue/EMS Fund	.15	<u>.15</u>
Rescue Squad Workers' Relief Fund	.10	.10
Division of Environmental Management	.00	.35.

(d) ~~Account. -- Each inspection station shall maintain a record of inspections performed, in a form approved by the Division of Motor Vehicles, for a period of 18 months and such records shall be made available for inspection by any law-enforcement officer, upon demand, during normal business hours. The Emissions Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle emissions inspection and maintenance program.~~

(e) ~~Civil Penalties. -- Civil penalties collected under this Part shall be credited to the Highway Fund as nontax revenue.~~

~~"§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful inspection certificate; 30-day grace period for expired inspection certificates. Infractions and criminal offenses for violations of inspection requirements.~~

~~(a) It is the intent of the Article that the provisions herein shall be carried out by the Commissioner of Motor Vehicles for the safety and convenience of the motoring public. The Commissioner shall have authority to promulgate only such regulations as are reasonably necessary for the purpose of carrying out the provisions of this inspection program, but such regulations shall not be effective until the same have been approved by the Governor.~~

~~(b) The Commissioner of Motor Vehicles is authorized to enter into agreements or arrangements with the duly authorized representatives of other jurisdictions whereby the safety equipment inspection required under this Article may be waived with respect to vehicles which have undergone substantially similar safety equipment inspections in such other jurisdictions and for which valid inspection certificates have been issued by such other jurisdictions. Such agreements or arrangements shall provide that vehicles inspected in this State and for which valid inspection certificates have been issued shall be accorded a similar privilege when subject to the laws of such other jurisdictions. Each such agreement or arrangement shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and citizens thereof; and all of the same shall be determined upon the basis and recognition of the benefits which accrue to the citizens of this State by reason of the agreement or arrangement.~~

~~The Commissioner is also authorized to promulgate rules and regulations providing that the safety equipment inspection may be waived with respect to~~

any vehicle which has undergone a similar inspection in another jurisdiction and for which a valid and current inspection certificate has been issued by such other jurisdiction.

~~(c) Except for the unauthorized reproduction of an inspection sticker, violation of any provision of this Article is an infraction which carries a penalty of not more than fifty dollars (\$50.00). The unauthorized reproduction of an inspection sticker is a forgery under G.S. 14-119.~~

~~(d) No person shall display or cause to be displayed or permit to be displayed upon any motor vehicle any inspection certificate, knowing the same to be fictitious or to be issued for another motor vehicle or to be issued without inspection and approval having been made. The Division is hereby authorized to take immediate possession of any inspection certificate which is fictitious or which has been otherwise unlawfully or erroneously issued or which has been unlawfully used.~~

~~(e) No person shall be convicted of failing to display current inspection certificate as provided under this Article if he produces in court at the time of his trial a receipt from a licensed motor vehicle inspection station showing that a valid inspection certificate was issued for the vehicle involved within 30 days after expiration of the previous inspection certificate issued for the vehicle.~~

~~(f) It shall be unlawful for any person to attach an inspection certificate to a vehicle if he knows, or has reasonable grounds to know, that the required inspection has not been performed according to law, including rules and regulations promulgated by the Commissioner.~~

~~(a) Infractions. -- A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars (\$50.00):~~

- ~~(1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current inspection sticker or otherwise.~~
- ~~(2) Allows an inspection sticker to be put on a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the sticker was attached or was not inspected properly.~~
- ~~(3) Attaches an inspection sticker to a vehicle, knowing or having reasonable grounds to know an inspection of the vehicle was not performed or was performed improperly.~~

~~(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:~~

- ~~(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.~~
- ~~(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.~~



- (3) The vehicle was in a state of disrepair on the date the inspection sticker expired, the owner has since repaired the vehicle, the vehicle is being driven from the owner's residence or other place where the owner repaired the vehicle to an inspection station, and the owner has not otherwise driven the vehicle since the inspection sticker expired.
- (4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) Felony. -- A person who forges an inspection sticker commits a Class I felony.

"§ 20-183.8A. Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

- (1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.
- (2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.
- (3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of the penalty is one hundred dollars (\$100.00) if the vehicle is a pre-1981 vehicle and is two hundred twenty-five dollars (\$225.00) if the vehicle is a 1981 or newer model vehicle.

"§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. -- The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. -- The Division must take the following action for a violation:

- (1) Type I. -- For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars (\$250.00) and suspend the



license of the business for six months. For a third or subsequent Type I violation within seven years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars (\$1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars (\$100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars (\$250.00) and revoke the mechanic's license for two years.

- (2) Type II. -- For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars (\$100.00). For a third or subsequent Type II violation within seven years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars (\$250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars (\$50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars (\$100.00) and suspend the mechanic's license for 90 days.

- (3) Type III. -- For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within seven years by the same emissions license holder, assess a civil penalty of twenty-five dollars (\$25.00).

(c) Station or Self-Inspector Responsibility. -- It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A Type I violation by an emissions inspector mechanic is considered a Type I violation by the station or self-inspector for whom the mechanic is employed. A Type II or III violation by an emissions mechanic is not automatically a Type II or III violation by the station or self-inspector for whom the mechanic is employed. The Division may determine which Type II or Type III violations by an emissions mechanic are also violations by the station or self-inspector.

(d) Missing Stickers. -- The Division must assess a civil penalty against an emissions inspection station or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

The amount of the penalty is twenty-five dollars (\$25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division

may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b). Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b).

"§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. -- It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

- (1) Put an emissions inspection sticker on a vehicle without performing an emissions inspection of the vehicle or after performing an emissions inspection in which the vehicle did not pass the inspection.
- (2) Use a test-defeating strategy when conducting an emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, or changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year to achieve a passing result.
- (3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.
- (4) Sell or otherwise give an inspection sticker to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.
- (5) Be unable to account for five or more inspection stickers at any one time upon the request of an auditor of the Division.
- (6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.
- (7) Transfer an inspection sticker from one vehicle to another.

(b) Type II. -- It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

- (1) Use the identification code of another to gain access to an emissions analyzer.
- (2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(c) Type III. -- It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to any of the following:

- (1) Fail to post an emissions license issued by the Division.
- (2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.

(d) Other Acts. -- The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation.

"§ 20-183.8D. Suspension or revocation of license for safety violations.

The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part.

"§ 20-183.8E. Administrative and judicial review.

A person whose application for a license or registration is denied, whose license or registration is suspended or revoked, who is assessed a civil penalty, or who receives a warning letter under this Part may obtain an administrative review of the action by the Commissioner by filing with the Division a written request for a hearing before the Commissioner. A request for a hearing must be filed within 10 days after the person receives written notice of the action for which a hearing is requested.

If the action that is the subject of a request for a hearing is the suspension or revocation of an emissions self-inspector license, an emissions inspection station license, or an emissions inspection mechanic license, the Commissioner must hold the hearing within 14 days after the Division receives the request. If the action that is the subject of a request for a hearing is not one of these actions, the Commissioner must hold a hearing within 90 days after the Division receives the request.

After a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder, the Commissioner must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the Commissioner finds that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. After a hearing on any other action, the Commissioner may uphold or modify the action.

Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision by the Commissioner under this section."

Sec. 2. The heading to Article 3A of Chapter 20 of the General Statutes reads as rewritten:

**"ARTICLE 3A.**

**"Motor Vehicle Law of 1947. Safety and Emissions Inspection Program."**

Sec. 3. Part 1 of Article 3A of Chapter 20 of the General Statutes is repealed.

Sec. 4. G.S. 20-127(e) is repealed.

Sec. 5. G.S. 20-128.2(b) is repealed.

Sec. 6. G.S. 20-384 reads as rewritten:

"§ 20-384. ~~Safety regulations applicable to motor carrier and private carrier vehicles.~~ Carriers must comply with safety rules and regulations.

(a) Scope. -- The Division of Motor Vehicles may ~~promulgate~~ adopt highway safety rules and regulations for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers.

(b) Infraction. -- A motor carrier who fails to conduct a safety inspection of a vehicle as required by 49 C.F.R. Part 396, the federal Motor Carrier

Safety Regulations, or who fails to mark a vehicle that has been inspected as required by that Part commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars (\$50.00)."

Sec. 7. Effective October 1, 1996, G.S. 20-54 reads as rewritten:

"§ 20-54. *Authority for refusing registration or certificate of title.*

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

- (1) ~~That the~~ The application contains ~~any~~ a false or fraudulent ~~statement or that statement,~~ the applicant has failed to furnish required information or reasonable additional information requested by the ~~Division or that Division,~~ or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this ~~Article;~~ Article.
- (2) ~~That the~~ The vehicle is mechanically unfit or unsafe to be operated or moved upon the ~~highways;~~ highways.
- (3) ~~That the~~ The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or ~~other~~ another person ~~having who has a valid lien upon such vehicle;~~ against the vehicle.
- (4) ~~That the~~ The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this ~~State;~~ State.
- (5) ~~That the~~ The required fee has not been paid.
- (6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid."

Sec. 8. Effective October 1, 1996, G.S. 20-183.8A, as enacted by Section 1 of this act, reads as rewritten:

"§ 20-183.8A. *Civil penalties against motorists for emissions violations.*

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

- (1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.
- (2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.
- (3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of penalty is one hundred dollars (\$100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars (\$250.00) if the vehicle is a 1981 or newer model vehicle. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid."

Sec. 9. Temporary Computer Matching. -- From the effective date of this act until October 1, 1996, the Division of Motor Vehicles of the Department of Transportation shall ensure motorist compliance with the

emissions inspection requirements of Part 2 of Article 3A of Chapter 20 of the General Statutes by the following computer matching method:

- (1) Determine from data supplied by emissions inspection stations if each vehicle that is subject to the emissions inspection requirements, and for which the Division issues or renews a registration, and has a current inspection sticker.
- (2) Send a warning letter to the owner of each vehicle that is not in compliance notifying the owner that the vehicle is not in compliance, that the Division will check to see if the vehicle is brought into compliance within 30 days of the date the letter is mailed, and that failure to comply will result in revocation of the registration of the vehicle.
- (3) Check to determine if a vehicle is brought into compliance as required by the letter.
- (4) Send a notice of violation and a notice of penalty to the owner of a vehicle that has not been brought into compliance in accordance with the first letter. The letter must notify the owner that the registration of the vehicle will be revoked effective 30 days from the date the second letter is mailed if the owner does not bring the vehicle into compliance within that time and pay any penalty that is due. The Division must assess a civil penalty against the owner of a vehicle that was not inspected within four months of the time it was required to be inspected. The penalty is the amount set in G.S. 20-183.8A, as enacted by Section 1 of this act.
- (5) Revoke the registration and pick up the registration plate for a vehicle whose owner has failed to bring the vehicle into compliance or pay a required penalty within 30 days after the second letter.

**Sec. 10.** The Joint Legislative Transportation Oversight Committee shall review the definition of a transaction that is set in the Current Operations Appropriations Act and establishes the method by which branch agents of the Division of Motor Vehicles of the Department of Transportation are reimbursed. The review shall evaluate whether the definition will adequately compensate branch agents for the time involved in denying a vehicle registration and explaining the reason for the denial when a vehicle registration is denied for failure to have an emissions inspection or pay an emissions inspection civil penalty. The review may include a review of the branch agent compensation and time involved in similar activities, such as the denial of a vehicle registration for failure to pay property taxes. The Committee shall report its findings to the 1995 General Assembly.

**Sec. 11.** The Division of Motor Vehicles of the Department of Transportation shall study the problem of the unlawful transfer of a vehicle inspection sticker from one vehicle to another. In studying this problem, the Division shall consider whether the current design of the inspection sticker can be improved so that an inspection sticker cannot be removed from a vehicle without tearing or otherwise becoming unusable and whether inspection stickers will be necessary when denial of vehicle registration becomes effective October 1, 1996. The Division shall also consider whether some vehicles, such as public school buses, should be exempt from



the requirement that a vehicle display an inspection sticker to prevent vandalism of buses that occurs when a person unlawfully removes an inspection sticker from the windshield of a bus. The Division shall report its findings to the Joint Legislative Transportation Oversight Committee by December 1, 1994.

**Sec. 12.** All expenditures for the 1994-95 fiscal year for the Exhaust Emission Inspection Program of the Division of Motor Vehicles of the Department of Transportation shall be paid from the Emissions Program Account, established by Section 1 of this act. Accordingly, the following amounts revert to the Highway Fund effective June 30, 1995, and the expenses for which these amounts are appropriated shall be paid from the Account:

- (1) The amount of the 1994-95 certified budget for the Exhaust Emission Inspection Program, Budget Code 0590.
- (2) The amount appropriated to the Division of Motor Vehicles for data processing improvements in Section 6 of Senate Bill 1505, AN ACT TO MODIFY THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 1993, TO MAKE APPROPRIATIONS FOR CAPITAL IMPROVEMENTS FOR THE 1994-95 FISCAL YEAR, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

**Sec. 13.** The Division of Motor Vehicles of the Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on a quarterly basis during the 1994-95 fiscal year on the implementation of Section 1 of this act. The Division shall include the following information in its report:

- (1) The number of remote visual observations of inspector performance conducted during that quarter and the results of the observations.
- (2) The number of site visits made during the quarter using covert vehicles set to fail and the results of the visits.
- (3) Any efficiencies in operations made possible by Section 1 of this act.
- (4) The progress of temporary computer matching.
- (5) Any recommendations of the Division for improvements in the vehicle emission inspection program.
- (6) Any other information requested by the Committee.

**Sec. 14.** The Secretary of the Department of Transportation may expend funds appropriated to the Department of Transportation for the 1994-95 fiscal year to expand efforts that encourage compliance with fuel tax laws. Funds expended to support these efforts shall be itemized and provided to the Joint Legislative Transportation Oversight Committee, the members of the House Appropriations Subcommittee on Transportation, and the members of the Senate Appropriations Subcommittee on Transportation for review prior to the expenditure of funds.

By December 1, 1994, the Secretary of the Department of Transportation and the Secretary of the Department of Revenue shall consider alternatives to collection of the fuel tax on diesel fuel and develop a plan to implement an assessment policy other than payment of the diesel-fuel tax at the pump.

**Sec. 15.** Sections 1 through 6 of this act become effective October 1, 1994. Sections 7 and 8 of this act become effective October 1, 1996. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 1249

**CHAPTER 755****AN ACT TO MAKE CHANGES CONCERNING THE BOARD OF ELECTROLYSIS EXAMINERS.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 88A-10 reads as rewritten:

"§ 88A-10. *Requirements for licensure as an electrologist.*

(a) Any person who desires to be licensed as an 'electrologist' pursuant to this Chapter shall:

- (1) Submit an application on a form approved by the Board;
- (2) Be a resident of North Carolina;
- (3) Be 18 years of age or older;
- (4) ~~Provide proof of graduation from a school certified by the Board pursuant to G.S. 88A-18; and, Meet the requirements of subsection (a1) of this section; and~~
- (5) ~~Pass a written~~ an examination given by the Board.

(a1) An applicant for licensure under this section shall provide:

- (1) Proof of graduation from a school certified by the Board pursuant to G.S. 88A-19; or
- (2) Proof satisfactory to the Board that, for at least one year prior to the date of application or the date of initial residence in this State, whichever is earlier, the applicant was engaged in the practice of electrology in a state that does not license electrologists.

Subdivision (2) of this subsection applies only to applicants whose residence in this State began on or after January 31, 1994, who do not meet the qualifications of subdivision (1) of this subsection or G.S. 88A-12.

(b) At least twice each year, the Board shall give an examination to applicants for licensure to determine the applicants' knowledge of the basic and clinical sciences relating to the theory and practice of electrology. The Board shall give applicants notice of the date, time, and place of the examination at least 60 days in advance.

(c) When the Board determines that an applicant has met all the qualifications for licensure, and has submitted the required fee, the Board shall issue a license to the applicant.

(d) An applicant otherwise qualified for licensure who is not a resident of this State may nevertheless submit a statement of intent to begin practicing electrology in this State and receive a license. The applicant must provide to the Board within six months of receiving a license evidence satisfactory to the Board that the applicant has actually begun to practice electrology in this State. The Board may revoke the license of an applicant who fails to submit this proof or whose proof fails to satisfy the Board."

**Sec. 2.** Chapter 88A of the General Statutes is amended by adding a new section to read:

"§ 88A-10.1. Temporary license.

The Board may issue a temporary license to practice electrology to an applicant who meets the requirements of G.S. 88A-10(a)(1)-(4). A temporary license may not be valid for more than six months and may be renewed not more than once. The Board may by rule provide for a shorter duration and may prohibit any renewal of a temporary license. The Board shall adopt rules setting the criteria for any renewals. The Board may by rule require that holders of a temporary license practice under supervision and may specify criteria for supervision in its rules, including the setting, amounts of supervision, and qualifications of supervisors."

**Sec. 3.** G.S. 88A-12 reads as rewritten:

"§ 88A-12. License renewal.

(a) Every electrologist license issued pursuant to this Chapter must be renewed annually. On or before the date the current license expires, a person who desires to continue to practice electrology shall apply for license renewal to the Board on forms approved by the Board, provide evidence of the successful completion of a continuing educational program approved by the Board, meet the criteria for renewal established by the Board, and pay the required fee. The Board may provide for the late renewal of licensure upon payment of a late fee as set by the Board, but late renewal may not be granted more than 90 days after expiration of the license.

(b) Any person who has failed to renew his license for more than 90 days after expiration may have it reinstated by applying to the Board for reinstatement on a form approved by the Board, furnishing a statement of the reason for failure to apply for renewal prior to the deadline, and paying the required fee. The Board may require evidence of competency to resume practice before reinstating the applicant's license."

**Sec. 4.** G.S. 88A-15 reads as rewritten:

"§ 88A-15. Exemptions from licensure.

The following individuals shall be permitted to practice electrology without a license:

- (1) Any physician licensed in accordance with Article 1 and Article 11 of Chapter 90 of the General Statutes.
- (2) A student at an approved school of electrology when electrolysis is performed in the course of study.
- (3) A person demonstrating on behalf of a manufacturer or distributor any electrolysis equipment or supplies, if such demonstration is performed without charge.
- (4) A employee of a hospital licensed under Chapter 131E of the General Statutes and working under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes who is certified by the American Board of Dermatology."

**Sec. 5.** G.S. 88A-19(a) reads as rewritten:

"(a) Any school in this State or another state that desires to be certified as a Board approved school of electrology shall:

- (1) Submit an application on a form approved by the Board;

- (2) Submit a detailed projected floor plan of the institutional area demonstrating adequate school facilities to accommodate students for purposes of lectures, classroom instruction, and practical demonstration;
- (3) Submit a detailed list of the equipment to be used by the students in the practical course of their studies;
- (4) Submit a copy of the planned electrology curriculum consisting of the number of hours and subject matter determined by the Board, provided that the number of hours required shall not be less than 120 hours and not more than 600 hours;
- (5) Submit a certified copy of the school manual of instruction;
- (6) Submit the names and qualifications of the instructors certified in accordance with G.S. 88A-16; and
- (7) Any additional information the Board may require."

**Sec. 5.1.** G.S. 88A-7 reads as rewritten:

"§ 88A-7. ~~Custody and use of funds.~~ Applicability of Executive Budget Act; audit oversight.

The Treasurer or the Executive Director shall deposit all fees payable to the Board ~~in financial institutions designated by the Board as official depositories. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Chapter.~~ with the State Treasurer, to be credited to the account of the Board. These funds shall be held and expended under the supervision of the Director of the Budget. The provisions of the Executive Budget Act apply to this Chapter. The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes."

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 1628

## CHAPTER 756

AN ACT CLARIFYING THAT A MOTOR VEHICLE OPERATING LEASE THAT CONTAINS A TERMINAL RENTAL ADJUSTMENT CLAUSE IS NOT A SALE AND DOES NOT CREATE A SECURITY INTEREST IN THE LEASED PROPERTY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 25-2A-103(1)(j) reads as rewritten:

"(j) 'Lease' means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease. The term includes a motor vehicle operating agreement that is considered a lease under § 7701(h) of the Internal Revenue Code."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 1984

## CHAPTER 757

## AN ACT TO EXEMPT FRANKLIN AND COLUMBUS COUNTIES FROM CERTAIN STATUTORY REQUIREMENTS IN CERTAIN CONSTRUCTION CONTRACTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The County of Franklin may contract for the design and construction of the following capital projects planned by the County without being subject to the requirements of G.S. 143-128(a) and (b), 143-129, 143-131, and 143-132.

- (1) Construct, install, and equip a 132-bed jail facility.
- (2) Renovate and equip an existing building for court-related facilities.
- (3) Construct and equip a new cultural arts and science building on the existing Franklinton High School campus.
- (4) Construct a new gymnasium; a nine-classroom, three-laboratory addition to the existing sciences building; an addition to the existing library; and a new administrative office suite on the existing Bunn High School campus.
- (5) Construct a new five-classroom addition to existing Louisburg Elementary School.
- (6) Expand and renovate the existing cafeteria and gymnasium at the existing Louisburg High School campus.

**Sec. 2.** The County of Columbus may contract for the design and construction of a medical office facility on the property of the Columbus County Hospital without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

**Sec. 3.** This act is effective upon ratification and expires December 31, 1995.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

H.B. 2132

## CHAPTER 758

## AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO LEASE A CERTAIN DESIGNATED PART OF THE RIGHT-OF-WAY OF N.C. 147 TO THE CITY OF DURHAM FOR PARKING PURPOSES.

*The General Assembly of North Carolina enacts:*

**Section 1.** The Department of Transportation may lease to the City of Durham the portion of the right-of-way of N.C. 147 below the elevated roadway and lying between Morehead Avenue and Willard Street and west of Blackwell Street, exclusive of any street right-of-way, for parking purposes, the lease to provide for subleasing of the right-of-way, in whole or in part by the City of Durham for public parking.

No parking facility shall be established that, in the opinion of the Department of Transportation, unreasonably:



- (1) Interferes with or impairs any property rights and easements of abutting owners;
- (2) Interferes with or obstructs the public use of N.C. 147; or
- (3) Interferes with or obstructs the maintenance of the highway structure located on the right-of-way.

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 940

## CHAPTER 759

### AN ACT TO REWRITE THE CHARITABLE SOLICITATIONS ACT.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 131C of the General Statutes is repealed.

**Sec. 2.** The General Statutes are amended by adding a new Chapter to read:

"Chapter 131F.

"Solicitation of Contributions.

"ARTICLE 1.

"General Provisions.

"§ 131F-1. Purpose.

The General Assembly recognizes the right of persons or organizations to conduct solicitation activities. It is the intent of the General Assembly to protect the public by requiring full disclosure by persons who solicit contributions from the public of the purposes for which the contributions are solicited and how the contributions are actually used. It is the intent of the General Assembly to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.

"§ 131F-2. Definitions.

The following definitions apply in this Chapter:

- (1) 'Association' means any voluntary statewide organization of persons for common ends especially as in an organized group working together or periodically meeting because of common interests, beliefs, or professions. These associations may serve charitable organizations including environmental, health, educational, humane, patriotic, scientific, artistic, social welfare, and civic.
- (2) 'Charitable' means for a benevolent purpose, including environmental, health, educational, humane, patriotic, scientific, artistic, social welfare, and civic.
- (3) 'Charitable organization' means any person who has or holds out as having a section 501(c)(3) tax exempt determination by the Internal Revenue Service and operates for a charitable purpose, or a person who is or holds himself out to be established for a charitable or civic purpose; or a person who employs a charitable or civic appeal as the basis of a solicitation, or employs an appeal that suggests there is a charitable or civic purpose for the appeal. 'Charitable organization' includes a chapter, branch, area office,

or similar affiliate soliciting contributions within the State for a charitable organization which has its principal place of business outside the State.

- (4) 'Charitable sales promotion' means an advertising or sales campaign that represents that the purchase or use of goods or services offered by a coventurer is to benefit a charitable organization. The provision of advertising services alone to a charitable organization does not constitute a charitable sales promotion.
- (5) 'Contribution' means a promise, pledge, grant of any money or property, financial assistance, or any other thing of value in response to a solicitation. 'Contribution' includes, in the case of a charitable organization or sponsor offering a good or service to the public, the excess of the price at which the charitable organization or sponsor or any person acting on behalf of the charitable organization or sponsor sells the good or service to the public over the fair market value of the good or service. 'Contribution' does not include bona fide fees, dues, or assessments paid by members if the membership is not conferred solely as consideration for making a contribution in response to a solicitation. 'Contribution' does not include funds obtained by a charitable organization or sponsor under government grants or contracts.
- (6) 'Coventurer' means any person who, for compensation, conducts a charitable sales promotion or a sponsor sales promotion, other than in connection with the solicitation of contributions.
- (7) 'Department' means the Department of Human Resources.
- (8) 'Emergency service employees' means employees who are firefighters, ambulance drivers, emergency medical technicians, or paramedics.
- (9) 'Federated fund-raising organization' means a federation of independent charitable organizations which have voluntarily joined together, including a united way, united arts fund, or community chest, for the purpose of raising and distributing contributions and where membership does not confer operating authority and control of the individual organization upon the federated group organization.
- (10) 'Fund-raising consultant' means any person who meets all of the following:

  - a. Is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, consult, or prepare material for the solicitation of contributions in this State.
  - b. Does not solicit contributions or employ, procure, or engage any person to solicit contributions.
  - c. Does not at any time have custody or control of contributions.
- (11) 'Fund-raising costs' means those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct

economic benefit. Fund-raising costs include salaries, rent, acquiring and obtaining mailing lists, printing, mailing, all direct and indirect costs of soliciting, and the cost of unsolicited merchandise sent to encourage contributions.

- (12) 'Law enforcement officers' means persons who are elected, appointed, or employed by the State or any political subdivision of the State and who meet either of the following:
- a. Are vested with the authority to bear arms and make arrests and have primary responsibility to prevent and detect crime or enforce the criminal, traffic, or highway laws of the State.
  - b. Have responsibility for supervision, protection, care, custody, or control of inmates within a correctional institution.
- (13) 'Membership' means the relationship of a person to an organization that entitles that person to the privileges, professional standing, honors, or other direct benefits of the organization in addition to the right to vote, elect officers, and hold office in the organization.
- (14) 'Owner' means any person who has a direct or indirect interest in any fund-raising consultant or solicitor.
- (15) 'Parent organization' means that part of a charitable organization or sponsor which coordinates, supervises, or exercises control over policy, fund-raising, and expenditures, or assists or advises one or more chapters, branches, or affiliates of a charitable organization or sponsor.
- (16) 'Person' means any individual, organization, trust, foundation, association, group, entity, partnership, corporation, society, or any combination of these acting as a unit.
- (17) 'Religious institution' means any church, ecclesiastical, or denominational organization, or any established physical place for worship in this State at which nonprofit religious services and activities are regularly conducted, and any bona fide religious groups that do not maintain specific places of worship. 'Religious institution' includes any separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code, and that is primarily supported by funds solicited inside its own membership or congregation.
- (18) 'Solicitation' means a request, directly or indirectly, for money, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. 'Solicitation' may occur by any of the following methods:
- a. Any oral or written request.
  - b. Any announcement to the press, radio, or television, by telephone or telegraph, or by any other communication device.

- c. Distributing, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contribution.
- d. Selling or offering or attempting to sell any good, service, chance, right, or any thing of value to benefit a charitable organization or sponsor.

The selling or offering or attempting to sell is a 'solicitation' whether or not the person making the solicitation receives any contribution. It is not a 'solicitation' when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under section 501(a) of the Internal Revenue Code and described in section 501(c) of the Internal Revenue Code.

- (19) 'Solicitor' means any person who, for compensation, does not qualify as a fund-raising consultant and does either of the following:
  - a. Performs any service, including the employment or engagement of other persons or services, to solicit contributions for a charitable organization or sponsor.
  - b. Plans, conducts, manages, consults, whether directly or indirectly, in connection with the solicitation of contributions for a charitable organization or sponsor.
- (20) 'Sponsor' means a person who is or holds out to others as soliciting contributions by the use of any name that implies affiliation with emergency service employees or law enforcement officers and who is not a charitable organization. 'Sponsor' includes a chapter, branch, or affiliate that has its principal place of business outside the State, if this chapter, branch, or affiliate solicits or holds out to be soliciting contributions in this State.
- (21) 'Sponsor purpose' means any program or endeavor performed to benefit emergency service employees or law enforcement officers.
- (22) 'Sponsor sales promotion' means an advertising or sales campaign conducted by a coventurer who represents that the purchase or use of goods or services offered by the coventurer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services alone to a sponsor does not constitute a sponsor sales promotion.

"§ 131F-3. Exemptions.

The following are exempt from the provisions of this Chapter:

- (1) Any person who solicits charitable contributions for a religious institution.
- (2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.
- (3) Any person who receives less than twenty-five thousand dollars (\$25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.
- (4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern

- Association of Colleges and Schools or an equivalent regional accrediting body, and any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, and any foundation or department having an established identity with any of these educational institutions.
- (5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.
  - (6) Any noncommercial radio or television station.
  - (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).
  - (8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.
  - (9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.
  - (10) A volunteer fire department, rescue squad, or emergency medical service.

#### "ARTICLE 2.

##### "Charitable Organizations and Sponsors.

##### "§ 131F-5. Licensure of charitable organizations and sponsors required.

(a) License Required. -- Unless exempted under G.S. 131F-3, a charitable organization, sponsor, or person that intends to solicit contributions in this State, to have funds solicited on its behalf, or to participate in a charitable sales promotion or sponsor sales promotion shall obtain a license by filing an application with the Department, obtaining approval of that application by the Department, and paying the applicable fee.

(b) Departmental Review. -- The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A recommended decision must be made within three days of the hearing. A final decision must be made within two days after the recommended decision. The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the



application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(c) License Renewal. -- The license shall be renewed on an annual basis. Any change in information from the original application for a license shall be filed annually on or before the fifteenth day of the fifth calendar month after the close of each fiscal year in which the charitable organization or sponsor solicited in this State, or by the date of any applicable extension of the federal filing date, whichever is later, provided that extensions given under this section shall not exceed three months after the initial renewal date or eight months after the conclusion of the year for which financial information is due at the time of renewal. A charitable organization or sponsor whose federal filing date has been extended shall, within seven days after receipt, forward a copy of the document granting the extension to the Department.

(d) Extension of Time. -- For good cause shown, the Department may extend the time for the license renewal and the annual filing of updated information for a period not to exceed 60 days, during which time the previous license shall remain in effect.

"§ 131F-6. Information required for licensure.

(a) Initial Information Required. -- The initial application for a license for a charitable organization or sponsor shall be submitted on a form provided by the Department, signed under oath by the treasurer or chief fiscal officer of the charitable organization or sponsor, and shall include the following:

- (1) The name of the charitable organization or sponsor, the purpose for which it is organized, the name under which it intends to solicit contributions, and the purpose for which the contributions to be solicited will be used.
- (2) The principal street address and telephone number of the charitable organization or sponsor and the street address and telephone numbers of any offices in this State or, if the charitable organization or sponsor does not maintain an office in this State, the name, street address, and telephone number of the person who has custody of its financial records. The parent organization that files a consolidated registration statement under G.S. 131F-7 on behalf of its chapters, branches, or affiliates shall additionally provide the street addresses and telephone numbers of all of its locations in this State.
- (3) The names and street addresses of the officers, directors, trustees, and the salaried executive personnel.
- (4) The date when the charitable organization's or sponsor's fiscal year ends.
- (5) A list or description of the major program activities.
- (6) The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.

- (7) The name of the individuals or officers who are in charge of any solicitation activities.
- (8) A financial report for the immediately preceding fiscal year upon a form provided by the Department. The report shall include the following:

  - a. The balance sheet.
  - b. A statement of support, revenue, and expenses, and any change in the fund balance.
  - c. The names and addresses of any fund-raising consultant, solicitor, and coventurer used, if any, and the amounts received from each of them, if any.
  - d. A statement of expenses in the following categories:

    - 1. Program.
    - 2. Management and general.
    - 3. Fund-raising.
- (9) In substitution for the financial report described in subdivision (8) of this subsection, a charitable organization or sponsor may submit a copy of its Internal Revenue Service Form 990 and Schedule A filed for the preceding fiscal year, or a copy of its Form 990-EZ filed for the preceding fiscal year.
- (10) A charitable organization or sponsor may include a financial report which has been audited by an independent certified public accountant or an audit with opinion by an independent certified public accountant. In the event that a charitable organization or sponsor elects to file this, this optional filing shall be noted in the Department's annual report submitted under G.S. 131F-25.
- (11) A newly organized charitable organization or sponsor with no financial history shall file a budget for the current fiscal year.
- (12) A statement indicating all of the following:

  - a. Whether or not the charitable organization or sponsor is authorized by any other state to solicit contributions.
  - b. Whether or not the charitable organization or sponsor or any of its officers, directors, trustees, or salaried executive personnel have been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets.
  - c. Whether or not the charitable organization or sponsor has had its authority denied, suspended, or revoked by any governmental agency, together with the reasons for the denial, suspension, or revocation.
  - d. Whether or not the charitable organization or sponsor has voluntarily entered into an assurance of voluntary compliance or agreement similar to that set forth in G.S. 131F-24(c), together with a copy of that agreement.
- (13) The names, street addresses, and telephone numbers of any solicitor, fund-raising consultant, or coventurer who is acting or has agreed to act on behalf of the charitable organization or sponsor, together with a statement setting forth the specific terms

of the arrangements for salaries, bonuses, commissions, expenses, or other compensation to be paid the fund-raising consultant, solicitor, or coventurer.

- (14) With initial licensing only, when and where the organization was established, the tax-exempt status of the organization, and a copy of any federal tax exemption determination letter. If the charitable organization or sponsor has not received a federal tax exemption determination letter at the time of initial licensing, a copy of the determination shall be filed with the Department within 30 days after receipt of the determination by the charitable organization or sponsor. If the organization is subsequently notified by the Internal Revenue Service of any challenge to its continued entitlement to federal tax exemption, the charitable organization or sponsor shall notify the Department of this fact within 30 days after receipt.

(b) Renewal Information Required. -- A license shall be renewed on an annual basis. The charitable organization or sponsor shall submit any changes in the information submitted from the initial application.

"§ 131F-7. Consolidated application and renewal.

(a) Election to File Consolidated Application. -- Each chapter, branch, member, or affiliate of a parent organization or association that is required to obtain a license under G.S. 131F-5 shall either file a separate application or shall report the required information to its parent organization or association. The parent organization or association may then file, on a form provided by the Department, a consolidated application for the parent organization or association and its chapters, branches, members, and affiliates located in this State.

(b) Consolidated Financial Information. -- If all contributions received by chapters, branches, or affiliates are remitted directly into the parent organization's centralized accounting system from which all disbursements are made, the parent organization may submit one consolidated financial report as part of the application on a form provided by the Department.

(c) Renewal Information. -- The parent organization or association may file the information required for a renewal of a license in a consolidated form provided by the Department.

"§ 131F-8. License fees.

(a) Required Fees. -- Except as provided in subsections (b) and (c) of this section, every charitable organization or sponsor shall pay the following fees with each license application:

- (1) Fifty dollars (\$50.00), if the contributions received for the last fiscal year were less than one hundred thousand dollars (\$100,000).
- (2) One hundred dollars (\$100.00), if the contributions received for the last fiscal year were one hundred thousand dollars (\$100,000) or more, but less than two hundred thousand dollars (\$200,000).
- (3) Two hundred dollars (\$200.00), if the contributions received for the last fiscal year were two hundred thousand dollars (\$200,000) or more.

(b) Exemption. -- A licensed charitable organization or sponsor that received less than five thousand dollars (\$5,000) in the last calendar or fiscal year shall not pay a fee.

(c) Parent Organization. -- A parent organization or association filing on behalf of one or more chapters, branches, members, or affiliates shall pay a single license fee for itself and its other chapters, branches, members, or affiliates. These license fees shall be imposed as follows:

- (1) One hundred dollars (\$100.00) for a parent organization or association and one to five chapters, branches, members, or affiliates.
- (2) Two hundred dollars (\$200.00) for a parent organization or association and 6 to 10 chapters, branches, members, or affiliates.
- (3) Two hundred fifty dollars (\$250.00) for a parent organization or association and 11 to 15 chapters, branches, members, or affiliates.
- (4) Four hundred dollars (\$400.00) for a parent organization or association and 16 or more chapters, branches, members, or affiliates.

(d) Late Filing. -- A charitable organization or sponsor which fails to file the renewal information by the due date may be assessed an additional fee for the late filing. The late filing fee shall be established by rule of the Department and shall not exceed twenty-five dollars (\$25.00) for each month or part of a month after the date on which the information was due to be filed or after the period of extension granted for the filing.

"§ 131F-9. Disclosure requirements of charitable organizations and sponsors.

(a) Contributions for Expressed Purpose. -- A charitable organization or sponsor shall solicit contributions only for the purpose expressed in its application and may apply contributions only in a manner substantially consistent with that purpose.

(b) Disclosures. -- A charitable organization or sponsor soliciting in this State shall include all of the following disclosures at the point of solicitation:

- (1) The name of the charitable organization and state of the principal place of business of the charitable organization or sponsor.
- (2) A description of the purpose for which the solicitation is being made.
- (3) Upon request, the name and either the address or telephone number of a representative to whom inquiries could be addressed.
- (4) Upon request, the amount of the contribution which may be deducted as a charitable contribution under federal income tax laws.
- (5) Upon request, the source from which a written financial statement may be obtained. The financial statement shall be for the immediate past fiscal year and shall be consistent with G.S. 131F-6. The written financial statement shall be provided within 14 days after the request and shall state the purpose for which funds are raised, the total amount of all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the stated purpose or



disbursed for the stated purpose, and whether the services of another person or organization have been contracted to conduct solicitation activities.

(c) Printed Disclosure. -- Every charitable organization or sponsor that is required to obtain a license under G.S. 131F-5 shall conspicuously display in capital letters in bold type of a minimum size 10 points, the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

'A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.'

When the solicitation consists of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page.

### "ARTICLE 3.

#### "Fund-Raising Consultants, Solicitors, and Coventurers.

##### "§ 131F-15. License required for fund-raising consultant.

(a) License Required. -- Unless exempted under G.S. 131F-3, a person shall not act as a fund-raising consultant in this State unless that person has obtained a license from the Department.

(b) License Application. -- Applications for a license or renewal of a license shall be submitted on a form provided by the Department, shall be signed under oath, and shall include the following:

- (1) The street address and telephone number of the principal place of business of the applicant and any street addresses of business locations in this State if the principal place of business is located outside this State.
- (2) The form of the applicant's business.
- (3) The names and residence addresses of all officers, directors, and owners.
- (4) Whether any of the owners, directors, officers, or employees of the applicant are related as parent, child, spouse, or sibling to any of the following individuals:
  - a. Other directors, officers, owners, or employees of the applicant.
  - b. Any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant.
  - c. Any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.
- (5) Whether the applicant or any of the applicant's officers, directors, employees, or owners have, within the last five years, been convicted of any felony, or of any misdemeanor arising from the conduct of a solicitation for a charitable organization or



sponsor or charitable or sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.

(c) Fees. -- The application for an initial or renewal license shall be accompanied by a license fee of two hundred dollars (\$200.00). A fund-raising consultant that is a partnership or corporation may obtain a license for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all of the officers, employees, and agents of the fund-raising consultant and all other persons with whom the fund-raising consultant has contracted to work under its direction shall be listed in the license application. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for additional one-year periods upon application to the Department and payment of the license fee.

(d) Contracts. -- Every contract or agreement between a fund-raising consultant and a charitable organization or sponsor shall be in writing, signed by two authorized officials of the charitable organization or sponsor, and filed by the fund-raising consultant with the Department at least five days prior to the performance of any service by the fund-raising consultant. Solicitation under the contract or agreement shall not begin before the filing of the contract or agreement. The contract shall contain all of the following provisions:

- (1) A statement of the charitable purpose or sponsor purpose for which the solicitation campaign is being conducted.
- (2) A statement of the respective obligations of the fund-raising consultant and the charitable organization or sponsor.
- (3) A clear statement of the fee that will be paid to the fund-raising consultant.
- (4) The effective and termination dates.
- (5) A statement that the fund-raising consultant shall not, at any time, have control or custody of contributions.

(e) Departmental Review. -- The Department shall examine each application or renewal filed by a fund-raising consultant and determine whether the requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the fund-raising consultant within 10 days after its receipt of the application or renewal. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the license requirements are not satisfied, the applicant may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A recommended decision must be made within three days of the hearing. A final decision must be made within two days after the recommended decision. The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the

custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(f) Fund. -- All license fees shall be paid to the Department and deposited into the Solicitation of Contributions Fund to be used to pay the costs incurred in administering and enforcing this Chapter.

(g) Change in Information. -- Unless otherwise provided, any material change in information filed with the Department pursuant to this section shall be reported in writing to the Department within seven working days after the change occurred.

" 131F-16. License required for solicitors.

(a) Licensure Required. -- Unless exempted under G.S. 131F-3, a person shall not act as a solicitor in this State unless that person has obtained a license from the Department and paid the applicable fees.

(b) Applications. -- Applications for a license or renewal of a license shall be submitted on a form provided by the Department, shall be signed under oath, and shall include the following information:

(1) The street address and telephone number of the principal place of business of the applicant and any North Carolina street addresses if the principal place of business is located outside this State.

(2) The form of the applicant's business.

(3) The place and date when the applicant, if other than an individual, was legally established.

(4) The names and residence addresses of all officers, directors, and owners.

(5) A statement as to whether any of the owners, directors, officers, or employees of the applicant are related as parent, spouse, child, or sibling to:

a. Any other directors, officers, owners, or employees of the applicant.

b. Any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant.

c. Any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.

(6) A statement as to whether the applicant or any of the directors, officers, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have been convicted, within the last five years, of any felony, or of a misdemeanor arising from the conduct of a solicitation for any charitable organization or sponsor or charitable or sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.

(7) The names of all persons in charge of any solicitation activity.

(c) Fees. -- The application for an initial or renewal license shall be accompanied by a fee of two hundred dollars (\$200.00). A solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of the partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all the officers, employees, and

agents of the solicitor and all other persons with whom the solicitor has contracted to work under that solicitor's direction, including solicitors, shall be listed in the license application or furnished to the Department within five days after the date of employment or contractual arrangement. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for an additional one-year period upon application to the Department and payment of the license fee.

(d) Bond. -- A solicitor shall, at the time of application or renewal of the license, file with and have approved by the Department a bond with a surety authorized to do business in this State and to which the solicitor is the principal obligor. The amount of the bond shall be determined as follows:

- (1) Twenty thousand dollars (\$20,000), if the contributions received for the last fiscal year were less than one hundred thousand dollars (\$100,000).
- (2) Thirty thousand dollars (\$30,000), if the contributions received for the last fiscal year were at least one hundred thousand dollars (\$100,000) but less than two hundred thousand dollars (\$200,000).
- (3) Fifty thousand dollars (\$50,000), if the contributions received for the last fiscal year were at least two hundred thousand dollars (\$200,000).

The solicitor shall maintain the bond in effect as long as the license is in effect. The liability of the surety under the bond shall not exceed an all-time aggregate liability of fifty thousand dollars (\$50,000). The bond, which may be in the form of a rider to a larger blanket liability bond, shall be payable to the State and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this Chapter or any rule adopted under this Chapter.

(e) Departmental Review. -- The Department shall examine each application filed by a solicitor. If the Department determines that the requirements are not satisfied, the Department shall notify the solicitor within 10 days after its receipt of the application. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the requirements are not satisfied, the applicant may request a hearing. The state shall bear the burden of proof at such hearing. The hearing shall be held within seven days after receipt of the request. Any recommended order, if one is issued, shall be rendered within three days after the hearing. The final order shall then be issued within two days after the recommended order. If there is no recommended order, the final order shall be issued within five days after the hearing. The proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provision set forth in this subsection prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during

the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(f) Solicitation Notice. -- No less than five days before commencing any solicitation campaign or event, the solicitor shall file with the Department a solicitation notice on a form provided by the Department. The notice shall be signed and sworn to by the contracting officer of the solicitor and shall include:

- (1) A description of the solicitation event or campaign.
- (2) Each location and telephone number from which the solicitation is to be conducted.
- (3) The legal name and residence address of each person responsible for directing and supervising the conduct of the campaign.
- (4) A statement as to whether the solicitor will, at any time, have custody of contributions.
- (5) The account number and location of each bank account where receipts from the campaign are to be deposited.
- (6) A full and fair description of the charitable or sponsor program for which the solicitation campaign is being carried out as provided in the contract between the solicitor and the charitable organization or sponsor.
- (7) The fund-raising methods to be used.
- (8) A copy of the contract executed in accordance with subsection (g) of this section.

(g) Contracts. -- Each contract or agreement between a solicitor and a charitable organization or sponsor for each solicitation campaign shall be in writing, shall be signed by two authorized officials of the charitable organization or sponsor, one of whom shall be a member of the organization's governing body and one of whom shall be the authorized contracting officer for the solicitor. Each contract or agreement shall contain all of the following provisions:

- (1) A statement of the charitable or sponsor purpose and program for which the solicitation campaign is being conducted.
- (2) A statement of the respective obligations of the solicitor and the charitable organization or sponsor.
- (3) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor. If the solicitation involves the sale of goods, services, or tickets to a fund-raising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor. Any stated percentage shall exclude any amount which the charitable organization or sponsor shall pay as fund-raising costs.
- (4) A statement of the percentage of the gross revenue for which the solicitor shall be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the amount of revenue received, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The



stated assumptions shall be based upon all of the relevant facts known to the solicitor regarding the solicitation to be conducted by the solicitor.

(5) The effective and termination dates of the contract.

(h) Financial Report. -- Within 90 days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the solicitor shall provide to the charitable organization or sponsor and file with the Department a financial report of the campaign, including the gross revenue received and an itemization of all expenses incurred. The report shall be completed on a form provided by the Department and shall be signed by an authorized official of the solicitor who shall certify under oath that the report is true and correct.

(i) Handling of Contributions. -- Each contribution collected by or in the custody of the solicitor shall be solely in the name of the charitable organization or sponsor on whose behalf the contribution was solicited. Not later than two days after receipt of each contribution, the solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which account shall be in the name of that charitable organization or sponsor. The charitable organization or sponsor shall have sole control of all withdrawals from the account and the solicitor shall not be given the authority to withdraw any deposited funds from the account.

(j) Records of Solicitors. -- During each solicitation campaign, and for not less than three years after its completion, the solicitor shall maintain the following records:

- (1) The date and amount of each contribution received and the name, address, and telephone number of each contributor.
- (2) The name and residence street address of each employee, agent, and any other person, however designated, who is involved in the solicitation, the amount of compensation paid to each, and the dates on which the payments were made.
- (3) A record of all contributions that at any time are in the custody of the solicitor.
- (4) A record of all expenses incurred by the solicitor for the payment of which the solicitor is liable.
- (5) A record of all expenses incurred by the solicitor for the payment of which the charitable organization or sponsor is liable.
- (6) The location of each bank or financial institution in which the solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made.
- (7) A copy of each pitch sheet or solicitation script used during the completed solicitation campaign.
- (8) If a refund of a contribution has been requested, the name and address of each person requesting the refund. If a refund was made, the amount and the date it was made.



(k) Records of Tickets. -- If the solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the solicitor shall maintain for at least three years the following records:

- (1) The name and address of each contributor who purchases or donates tickets and the number of tickets purchased or donated by the contributor.
- (2) The name and address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

(l) Review of Records. -- Any of the records described in this section shall be made available to the Department upon request and shall be furnished within 10 days after the request.

(m) Change in Information. -- Unless otherwise provided in this Chapter, any change in any information filed with the Department under this section shall be reported in writing to the Department within seven days after the change occurs.

(n) License Rescinded. -- Any person licensed as a solicitor shall permanently lose that person's license if it is determined that that person, any officer or director thereof, any person with a ten percent (10%) or greater interest therein, or any person the solicitor employs, engages, or procures to solicit for compensation, has been convicted in the last five years of a crime arising from the conduct of a solicitation for a charitable organization or sponsor or a charitable purpose or sponsor purpose.

"§ 131F-17. Disclosure requirements of solicitors.

(a) General Disclosures. -- A solicitor shall comply with the following disclosures:

- (1) Prior to orally requesting a contribution or along with a written request for a contribution, a solicitor shall clearly disclose:
  - a. The name of the solicitor as on file with the Department.
  - b. If the individual acting on behalf of the solicitor identifies himself by name, the individual's legal name.
  - c. That the caller is a paid solicitor.

- (2) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt, or reminder sent to any person who has contributed or has pledged to contribute, shall include a clear disclosure of the information required under subdivision (1) of this subsection.

- (3) In addition to the information required by subdivision (1) of this subsection, any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state in capital letters in bold type of a minimum of 10 points:

'A COPY OF THE LICENSE AND FINANCIAL INFORMATION OF THE SOLICITOR MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.'

When the solicitation materials consist of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page.

- (4) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as a benefit from the solicitation campaign.

- (5) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the percentage of the contribution which may be deducted as a charitable contribution under federal income tax laws.

(b) Tickets. -- A solicitor shall not represent that tickets to any event will be donated for use by another person, unless:

- (1) The solicitor has the written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.
- (2) The written commitments are filed with the Department prior to any solicitation.

The contributions solicited for donated tickets shall not be more than the amount representing the number of ticket commitments received from persons and filed with the Department. At least seven days before the date of the event, the solicitor shall give all donated tickets to each person that made the written commitment to accept them.

"§ 131F-18. Requirements of coventurers.

(a) Written Consent. -- Prior to the commencement of any charitable sales promotion or sponsor sales promotion in this State conducted by a coventurer on behalf of a charitable organization or sponsor, the coventurer shall obtain the written consent of the charitable organization or sponsor whose name will be used during the charitable sales promotion or sponsor sales promotion.

(b) Rules. -- The Department may adopt rules requiring disclosure in advertising for a charitable sales promotion or sponsor sales promotion of information relating to the portion or amount that will benefit the charitable organization or sponsor or the charitable purpose or sponsor purpose.

(c) Final Accounting. -- A final accounting for each charitable sales promotion or sponsor sales promotion shall be prepared by the coventurer following completion. The final accounting shall be provided to the charitable organization or sponsor on whose behalf the sales promotion was conducted within 10 days after a request by the charitable organization or sponsor. The final accounting shall be kept by the coventurer for a period of three years, unless the coventurer and the charitable organization or sponsor mutually agree that the accounting should be kept by the charitable organization or sponsor instead of the coventurer. A copy of the final accounting shall be provided to the Department no later than 10 days after the Department requests it.

"ARTICLE 4."Prohibited Acts and Enforcement."§ 131F-20. Prohibited acts.

It is unlawful for any person to:

- (1) Violate or fail to comply with the requirements of this Chapter.
- (2) Act as a fund-raising consultant or solicitor after the expiration, suspension, or revocation of that person's license.
- (3) Enter into any contract or agreement with or employ a fund-raising consultant or solicitor unless that fund-raising consultant or solicitor is licensed by the Department.
- (4) Knowingly file false or misleading information in any document required to be filed with the Department or in response to any request or investigation by the Department or the Attorney General.
- (5) Make misrepresentations or misleading statements to the effect that any other person sponsors or endorses the solicitation, approves of its purpose, or is connected therewith, when that person has not given written consent to the use of that person's name.
- (6) Represent that a contribution is for or on behalf of a charitable organization or sponsor, or to use any emblem, device, or printed matter belonging to or associated with a charitable organization or sponsor, without first being authorized in writing to do so by the charitable organization or sponsor.
- (7) Use a name, symbol, emblem, device, service mark, or statement so closely related or similar to that used by another charitable organization or sponsor that the use would mislead the public.
- (8) Falsely state that the person is a member of or a representative of a charitable organization or sponsor or falsely state or represent that the person is a member of or represents law enforcement officers or emergency service employees.
- (9) Misrepresent or mislead anyone by any manner, means, practice, or device to believe that the person on whose behalf the solicitation or sale is being conducted is a charitable organization or sponsor, or that any of the proceeds of the solicitation or sale will be used for charitable or sponsor purposes.
- (10) Represent that a charitable organization or sponsor will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Department under this Chapter, or that a charitable organization or sponsor will receive an actual or estimated dollar amount or percentage per unit of goods or services purchased or used in the charitable or sponsor sales promotion that is greater than that agreed to by the coventurer and the charitable organization or sponsor.
- (11) Use or exploit the fact of registration or the filing of any report with any governmental agency to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the State. However, use of the statement required in

G.S. 131F-9(c) or G.S. 131F-17(a)(3) is not a prohibited use or exploitation.

- (12) Make misrepresentations or misleading statements to the effect that the donation of a contribution or the display of any sticker, emblem, or insignia offered to contributors shall entitle a person to any special treatment by emergency service employees or law enforcement officers in the performance of their official duties.
- (13) Solicit contributions from another person while wearing the uniform of an emergency service employee or law enforcement officer, or while on duty as an emergency service employee or law enforcement officer, except where the solicitation is for a charitable organization or sponsor or except when soliciting contributions to benefit an emergency service employee or law enforcement officer who has been injured in the line of duty or to benefit the family or dependents of an emergency service employee or law enforcement officer who has been killed in the line of duty.
- (14) Solicit contributions on behalf of another person using any statement that the failure to make a contribution shall result in a reduced level of law enforcement services being provided to the public or the person solicited.
- (15) Employ in any solicitation any device or scheme to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise.
- (16) Notify any other person by any means, as part of an advertising scheme or plan, that the other person has won a prize, received an award, or has been selected or is eligible to receive anything of value if the other person is required to purchase goods or services, pay any money to participate in, or submit to a promotion effort.
- (17) Fail to provide complete and timely payment to a charitable organization or sponsor of the proceeds from a solicitation campaign or a charitable or sponsor sales promotion.
- (18) Fail to apply contributions in a manner substantially consistent with the solicitation.
- (19) Fail to identify the professional relationship to the person for whom the solicitation is being made.
- (20) To send to any person a writing which simulates or resembles an invoice unless the intended recipient has contracted for goods, property, or services from the charitable organization or solicitor who sends the writing.

"§ 131F-21. Violation as deceptive or unfair trade practice.

Any person who commits an act or practice that violates any provision of this Chapter engages in an unfair trade practice in violation of G.S. 75-1.1.

"§ 131F-22. Criminal penalties.

Except as otherwise provided in this Chapter and in addition to any administrative or civil penalties, any person who willfully and knowingly violates a provision of this Chapter commits a Class 1 misdemeanor.

"§ 131F-23. Enforcement.



(a) Investigation. -- The Department may conduct an investigation of any person whenever there is an allegation or appearance, either upon complaint or otherwise, that a violation of this Chapter or of any rule adopted or of any order issued pursuant to this Chapter has occurred or is about to occur.

(b) Subpoena Power. -- The Department may issue and serve subpoenas and subpoenas *duces tecum* to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The Department, or its duly authorized representative, may administer oaths and affirmations to any person.

(c) Court Action. -- In the event of substantial noncompliance with a subpoena or subpoena *duces tecum* issued or caused to be issued by the Department, the Department may petition the superior court of the county in which the person subpoenaed resides or has the principal place of business for an order requiring the subpoenaed person to appear and testify and to produce any books, accounts, records, and other documents as are specified in the subpoena *duces tecum*. The court may grant injunctive relief restraining the person from collecting contributions and any other relief, including the restraint by injunction or appointment of a receiver, or any transfer, pledge, assignment, or other disposition of the person's assets, or any concealment, alteration, destruction, or other disposition of subpoenaed books, accounts, records, or other documents and materials as the court deems appropriate, until the person or organization has fully complied with the subpoena or subpoena *duces tecum* and the Department has completed its investigation or examination. The court may also order the person to produce a financial statement that has been audited by an independent certified public accountant. Costs incurred by the Department to obtain an order granting, in whole or in part, a petition for enforcement of a subpoena or subpoena *duces tecum* shall be taxed against the subpoenaed person and failure to comply with the order shall be contempt of court.

(d) Violations. -- The Department may enter an order imposing one or more of the penalties set forth in subsection (e) of this section if the Department finds that a charitable organization, sponsor, fund-raising consultant, or solicitor, or their officers, agents, directors, or employees have engaged in any of the following acts:

- (1) Violated or is operating in violation of any of the provisions of this Chapter or of the rules adopted or orders issued under this Chapter.
- (2) Made a false statement in an application, statement, or report required to be filed under this Chapter.
- (3) Refused or failed, after notice, to produce any records or to disclose any information required to be disclosed under this Chapter or the rules adopted by the Department.
- (4) Made a false statement in response to any request or investigation by the Department or the Attorney General.

(e) Penalties. -- Upon a finding as set forth in subsection (d) of this section, the Department may enter an order as follows:



- (1) Imposing an administrative penalty not to exceed one thousand dollars (\$1,000) for each act or omission which constitutes a violation of this Chapter or a rule or an order.
- (2) Issuing a cease and desist order that directs that the person cease and desist specified fund-raising activities.
- (3) Refusing to register or cancelling or suspending a registration.
- (4) Placing the registrant on probation for a period of time, subject to such conditions as the Department may specify.
- (5) Issuing of a letter of concern.
- (6) Cancelling an exemption granted under G.S. 131F-3.

(f) Procedures. -- Except as otherwise provided in this section, the administrative proceedings which could result in the entry of an order imposing any of the penalties specified in subsection (e) of this section are governed by Chapter 150B of the General Statutes.

(g) Disposition of Penalties. -- Penalties collected by the Department under subsection (e) of this section shall be credited to the General Fund as nontax revenue.

"§ 131F-24. Civil remedies and enforcement.

(a) Civil Remedies. -- In addition to other remedies authorized by law, the Attorney General may bring a civil action in superior court to enforce this Chapter. Upon a finding that any person has violated this Chapter, a court may make any necessary order or enter a judgment, including a temporary or permanent injunction, a declaratory judgment, the appointment of a master or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions in accordance with the charitable or sponsor purpose expressed in the registration statement or in accordance with the representations made to the person solicited, the reimbursement of the Department for attorneys' fees and costs, including investigative costs, and any other equitable relief the court finds appropriate. Upon a finding that any person has violated any provision of this Chapter, a court may enter an order imposing a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation.

(b) Attorney General. -- The Attorney General may conduct any investigation necessary to bring a civil action under this section, including administering oaths and affirmations, subpoenaing witnesses or material, and collecting evidence.

(c) Voluntary Compliance. -- The Attorney General may terminate an investigation or an action upon acceptance of a person's written assurance of voluntary compliance with this Chapter. Acceptance of an assurance may be conditioned on commitment to reimburse donors or to take other appropriate corrective action. An assurance is not evidence of a prior violation of any of this Chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is *prima facie* evidence of a violation of this Chapter.

"ARTICLE 5.

"Miscellaneous.

"§ 131F-25. Public information; annual report.

(a) Public Information Program. -- The Department shall develop a public information program to further the purposes of this Chapter. The purpose of the program is to help the public recognize unlawful, misleading, deceptive, or fraudulent solicitations and make knowledgeable, informed decisions concerning contributions.

(b) Information to Be Included. -- The program shall include information concerning:

- (1) The laws governing solicitations, including licensing and disclosure requirements, prohibited acts, and penalties.
- (2) The means by which the public can report suspected violations or file a complaint.
- (3) Any other information the Department believes will assist the public in making knowledgeable and informed decisions concerning contributions.

(c) Annual Report. -- The Department shall prepare an annual report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the information filed under this Chapter which the Department determines will assist the public in making informed and knowledgeable decisions concerning contributions. The report shall include the following:

- (1) A list of complaints filed for which violations were found to have occurred in each of the following categories: charitable organizations, sponsors, solicitors, and fund-raising consultants.
- (2) A list of the number of investigations by the Department, enforcement actions commenced under this Chapter, and the disposition of those actions.
- (3) A list of those charitable organizations and sponsors that have voluntarily submitted an audited financial statement pursuant to G.S. 131F-6(a)(10) or an audit with an opinion prepared by an independent certified public accountant.

"§ 131F-26. Contributions solicited for, or accepted by or on behalf of, a named individual.

(a) Trust Account Required. -- Contributions solicited for, or accepted by or on behalf of, a named individual shall be deposited in a trust account opened by a trustee named in a properly established trust document.

(b) Use of Trust Funds. -- Contributions deposited in the trust fund may be used only for the purpose for which the contributions were solicited; if the contributions are no longer needed for the purpose for which they were solicited, they may be used for another similar charitable purpose. The trustee may disburse funds from the trust account only after making a written record verifying the purpose for which the funds will be used accompanied by documentation of the identity of the payee and the justification for the payment. The Trustee shall retain these records for each disbursement from the trust account for a period of three years after the disbursement.

"§ 131F-27. Records.

Each charitable organization, sponsor, fund-raising consultant, and solicitor shall keep, for a period of at least three years, true and accurate records as to their activities in the State. The records shall be made

available to the Department for inspection and shall be furnished no later than 10 days after the request was made.

"§ 131F-28. Rule-making authority.

The Department shall have the authority to adopt rules necessary for the implementation of this Chapter or to prevent false or deceptive statements or conduct in the solicitation of charitable contributions."

**Sec. 3.** This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 1662

## CHAPTER 760

### AN ACT TO ANNEX TO THE TOWN OF DAVIDSON A DESCRIBED AREA LYING WITHIN ITS CORPORATE BOUNDARIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** The corporate limits of the Town of Davidson are extended to include that part of the following territory surrounded by the existing corporate limits which is not already in the corporate limits: BEGINNING at an iron on the west side of the right-of-way of Pine Road at the corner of D. A. Barnes (now or formerly) as described in a Deed recorded in Book 3182 at Page 541 in the Mecklenburg Public Registry; thence with the westerly edge of said right-of-way S. 24-28 E. 163.24 feet to an iron in the intersection of said road right-of-way with the westerly edge of a 68 foot right-of-way for a Duke Power transmission line; thence with the westerly edge of said transmission line right-of-way S. 09-17-33 W. 821.41 feet to an iron in the center line of a 60 foot road easement of Davidson Retirement Community, Inc.; thence in five (5) courses and distances with the center line of said roadway easement as follows: (1) S. 60-09-17 W. 98 feet; (2) with the arc of a circular curve to the left, having a radius of 650 feet, a distance of 262.62 feet, which arc is subtended by a chord of 260.84 feet, having a bearing of S. 48-34-47 West; (3) S. 37-00-17 W. 584 feet; (4) with the arc of a circular curve to the right, having a radius of 300 feet, a distance of 548.12 feet, which arc is subtended by a chord of 475 feet, having a bearing of S. 89-20-46 West; (5) N. 38-18-43 W. 1.04 feet to a point in the line of Davidson Retirement Community, Inc.; thence with its line in ten (10) courses and distances as follows: (1) N. 22-09-34 E. 140.45 feet to a point in a creek [Calls (2) through (9) being approximately the center line of said creek]; (2) N. 02-13-46 E. 203.29 feet; (3) N. 17-04 E. 107.42 feet; (4) N. 07-07-59 W. 265 feet; (5) N. 00-24-23 E. 137.19 feet; (6) N. 05-43 E. 61.78 feet; (7) N. 01-56 E. 66.5 feet; (8) N. 04-00 W. 54.33 feet; (9) N. 03-57 W. 57 feet; and (10) N. 23-05-42 W. 213.19 feet to an iron in the corner of Charles M. Coffey (now or formerly); thence with the line of Coffey, N. 16-09-54 W. 283.25 feet to an iron, the corner of Richard H. Ault (now or formerly); thence with two of his lines as follows: N. 73-11-08 E. 600 feet to an iron; thence N. 03-26-47 E. 434.70 feet to an iron, a corner of the Swimming Hole, Inc.; thence with its line N. 26-28-54 E. 152.92 feet to an iron, the corner of Joseph B. Henderson (now or formerly); thence with his line S. 24-09-23 E. 345.07 feet to an

iron; thence S. 03-13-21 E. 181.95 feet to a point, the corner of Mrs. R. S. Knox (now or formerly); thence with two of her lines as follows: S. 20-54-44 E. 210 feet to an iron; thence N. 66-22-20 E. 168.47 feet to an iron, a corner of D. A. Barnes (now or formerly); thence with two of his lines as follows: S. 24-28 E. 100 feet to an iron; thence N. 66-22-20 E. 200 feet to the point or place of BEGINNING; containing 39.846 acres, more or less, and being more particularly shown on a plat of survey by Robert A. Burns, Registered Land Surveyor, dated February 8, 1984.

**Sec. 2.** This act becomes effective July 31, 1994.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

S.B. 1579

## CHAPTER 761

# AN ACT TO MAKE TECHNICAL, CONFORMING, AND ADMINISTRATIVE CHANGES TO THE MOTOR VEHICLE LAWS AND OTHER LAWS CONCERNING THE DEPARTMENT OF TRANSPORTATION.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-17(2) reads as rewritten:

"(2) Either of the following impaired driving offenses:

- a. Impaired driving under G.S. 20-138.1.
- b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of ~~0.10~~ 0.08 or more."

**Sec. 1.1.** G.S. 20-7 is amended by adding a new subsection to read:

"(p) The Division must give the clerk of superior court in each county at least 50 copies of the driver license handbook free of charge. The clerk must give a copy to a person who requests it."

**Sec. 2.** G.S. 20-28(a), as amended by Section 320 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"(a) Driving While License Revoked. -- Any person whose drivers license has been ~~revoked, other than permanently,~~ revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without a drivers license."

**Sec. 3.** G.S. 20-28(b), as amended by Section 321 of the 1993 Session Laws, is repealed.

Sec. 4. G.S. 20-35, as amended by Section 324 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 20-35. Penalties for ~~misdemeanor~~ violating Article; defense to driving without a license.

(a) Penalty. -- A violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies. It shall be a Class 2 misdemeanor to violate any of the provisions of this Article unless such violation is by this Article or other law of this State declared to be a felony.

(b) ~~Unless another penalty is in this Article or by the laws of this State provided, every person convicted of a Class 2 misdemeanor.~~

(c) Defenses. -- A person may not be convicted of failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted of driving a motor vehicle without a regular drivers license if, when tried for that offense, the person shows all the following:

(1) That, at the time of the offense, the person had an expired license.

(2) The person renewed the expired license within 30 days after it expired and now has a drivers license.

(3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense."

Sec. 5. G.S. 20-66, as amended by Section 2 of Chapter 467 of the 1993 Session Laws, reads as rewritten:

"§ 20-66. Renewal of vehicle ~~registration; prorated fees~~ registration.

(a) Annual Renewal. -- The registration of a vehicle must be renewed annually. To renew the registration of a vehicle, the owner of the vehicle must file an application with the Division and pay the required registration fee. The Division may receive and grant an application for renewal of registration at any time before the registration expires.

(b) Method of Renewal. -- When the Division renews the registration of a vehicle, it must issue a new registration card for the vehicle and either a new registration plate or a registration renewal sticker. The Division may ~~not~~ renew a registration plate for a any type of vehicle by means of a renewal sticker ~~unless the Division is authorized to use that method of renewal. The Division may renew a registration plate issued for the following types of vehicles by means of a renewal sticker:~~

(1) ~~Motorcycles.~~

(2) ~~Private passenger vehicles.~~

(3) ~~U-drive-it passenger vehicles.~~

(4) ~~Property-hauling vehicles licensed for 4,000 pounds gross weight.~~

(5) ~~Vehicles registered under the International Registration Plan.~~

(6) ~~Trailers, sticker.~~

(b1) Repealed by Session Laws 1993, c. 467, s. 2.

(c) Renewal Stickers. -- A registration renewal sticker issued by the Division must be displayed on the registration plate that it renews in the place prescribed by the Commissioner and must indicate the period for



which it and the registration plate on which it is displayed are valid. Except where physical differences between a registration renewal sticker and a registration plate render a provision of this Chapter inapplicable, the provisions of this Chapter relating to registration plates apply to registration renewal stickers.

~~(d) Staggered Expiration. -- The Division may issue registration plates for vehicles with expiration dates that vary from month to month so that an approximately equal number will expire during each month of the registration year.~~

~~(e) Prorated Fee. -- A vehicle license fee shall be computed by dividing the annual license fee by 12 and multiplying the quotient by the number of months remaining prior to the end of the month of expiration of the registration. Amounts so computed shall be rounded to the nearest multiple of twenty-five cents (25c).~~

(f) Repealed by Session Laws 1993, c. 467, s. 2.

(g) When Renewal Sticker Expires. -- The registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker ~~expired~~. expired if the vehicle is not registered under the International Registration Plan. If the vehicle is registered under the International Registration Plan, it is not lawful to operate the vehicle on a highway after the sticker expires.

The Division may vary the expiration dates of registration renewal stickers issued for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division implements registration renewal for a type of vehicle by means of a renewal sticker, it may issue a registration renewal sticker that expires at the end of any monthly interval beginning at nine months and ending at eighteen months.

(h) When Calendar-Year Plate Expires. -- The registration of a vehicle that is not renewed by means of a registration renewal sticker expires at midnight on December 31 of each year. It is lawful, however, to operate the vehicle on a highway until midnight on the following February 15.

(i) Property Tax Consolidation. -- When the Division receives an application under subsection (a) for the renewal of registration before the current registration expires, the Division shall grant the application if it is made for the purpose of consolidating the property taxes payable by the applicant on classified motor vehicles, as defined in G.S. 105-330. The registration fee for a motor vehicle whose registration cycle is changed under this subsection shall be reduced by a prorated amount. The prorated amount is one-twelfth of the registration fee in effect when the motor vehicle's registration was last renewed multiplied by the number of full months remaining in the motor vehicle's current registration cycle, rounded to the nearest multiple of twenty-five cents (25c)."

Sec. 6. Section 343 of Chapter 539 of the 1993 Session Laws is repealed.

Sec. 7. G.S. 20-88.1 is amended by adding a new subsection to read:

"(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of Education, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools."

**Sec. 8.** G.S. 20-95 reads as rewritten:

"§ 20-95. Licenses Prorated fee for license plate issued for less other than a year.

(a) Calendar-Year Plate. -- Except as provided in subsection (b) of this section, licenses The fee for a calendar-year license plate issued on or after April 1 and before July 1 of each a year shall be three fourths of the annual fee; licenses issued on or after July 1 and before October 1 shall be one half of the annual fee; and licenses issued on or after October 1 shall be one fourth of the annual fee. is a percentage of the annual fee determined in accordance with the following table:

<u>Date Plate Issued</u>	<u>Percentage of Annual Fee</u>
<u>April 1 through June 30</u>	<u>75%</u>
<u>July 1 through September 30</u>	<u>50</u>
<u>October 1 through December 31</u>	<u>25.</u>

(al) Plate With Renewal Sticker. -- The fee for a license plate whose registration is renewed by means of a registration renewal sticker for a period of other than 12 months is a prorated amount of the annual fee. The prorated amount is one-twelfth of the annual fee multiplied by the number of full months in the period beginning the date the renewal sticker becomes effective until the date the renewal sticker expires, rounded to the nearest dollar.

(b) Scope. -- This section does not apply to license plates issued pursuant to G.S. 20-79.1, 20-79.2, 20-84, 20-84.1, 20-87(9) or (10), and 20-88(c)."

**Sec. 9.** G.S. 20-97(a), as rewritten by Section 1.1 of Chapter 456 of the 1993 Session Laws, reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or ~~municipality, other than Alleghany County,~~ municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than five dollars (\$5.00) per year upon any vehicle ~~resident,~~ resident therein, and except that Alleghany County may levy not more than ten dollars (\$10.00) per year upon any vehicle ~~resident,~~ resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab."

**Sec. 10.** G.S. 20-118(c)(1) reads as rewritten:

"(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of ~~such~~ the consecutive sets of tandem axles is 36 feet or more. ~~Tank trailers, dump trailers,~~

~~and ocean going transport containers on two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the second and the fifth axles of such consecutive sets of tandem axles is 30 feet or more. The exception for tank trailers, dump trailers, and ocean transport containers shall expire August 31, 1988."~~

Sec. 11. G.S. 20-118(c)(5), as amended by Chapter 426 of the 1993 Session Laws, reads as rewritten:

- "(5) ~~A truck or other motor vehicle shall be exempt from such~~ The light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting processed and subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:
- a. Processed or unprocessed seafood from boats or any other point of origin, meats and origin to a processing plant or a point of further distribution.
  - b. Meats or agricultural crop products originating from a farm, or farm to first market.
  - c. Unprocessed forest products originating from a farm or from woodlands, or livestock woodlands to first market.
  - d. Livestock or poultry from their point of origin to first market.
  - e. Livestock by-products or poultry by-products from their point of origin, or recyclable origin to a rendering plant.
  - f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).
  - g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

~~material for processing from the point of origin on a light-traffic road to the nearest State maintained road which is not posted to prohibit the transportation of statutory load limits. As used in this subdivision, "processing" has the same meaning as defined in G.S. 130A-290(a)(23) and "recyclable material" has the same meaning as defined in G.S. 130A-290(a)(26)."~~

Sec. 12. G.S. 20-118(c)(9) is repealed.

Sec. 13. G.S. 20-118(c)(12), as enacted by Chapter 470 of the 1993 Session Laws, reads as rewritten:

- "(12) A Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions and descriptions, is hauling agricultural crops within 35 miles of

from the farm where they were grown; grown to first market, is within 35 miles of that farm, and does not exceed its registered weight:

- a. ~~Has~~ Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle single-axle weight of no more than 22,000 pounds, and a tandem-axle tandem-axle weight of no more than 42,000 pounds, pounds, and a length of at least 51 feet between the first and last axles of the combination.
- b. ~~Is a five-axle combination with a gross weight of no more than 88,000 pounds.~~
- c. Is a four-axle combination with a tandem-axle gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

Sec. 14. G.S. 20-118(e), as amended by Chapters 426 and 533 of the 1993 Session Laws, reads as rewritten:

"(e) Penalties. --

- (1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.
- (2) ~~For~~ The penalty for a violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1) or (b)(2) of this section by a motor vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection. processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution, meats or agricultural crop products originating from a farm to first market, unprocessed forest products originating from a farm or from woodlands to first market, or livestock or poultry by products from their point of origin to a rendering plant, recyclable material for processing from a point of origin to a scrap-processing facility, or that is fully enclosed, is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters, and is being operated for that purpose, the Department of Transportation shall assess a civil penalty against the owner or registrant of the vehicle equal to the amount produced by applying one-half of the rate indicated in the schedule in subdivision (1) of



~~this subsection to the weight in pounds on each axle in excess of the maximum weight in pounds allowed. As used in this subdivision, "processing" has the same meaning as defined in G.S. 130A-290(a)(23) and "recyclable material" has the same meaning as defined in G.S. 130A-290(a)(26).~~

- (3) Except as provided in subdivision (4) of this subsection, for a violation of an axle-group weight limit set in subdivision (b)(3) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle in accordance with the following schedule: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. These penalties apply separately to each axle-group weight limit violated. The penalty shall be assessed on each pound of weight in excess of the maximum permitted.
- (4) ~~For The penalty for a violation of any an axle-group weight limit set in subdivision (b)(3) of this section by a motor vehicle described in subdivision (2) of this subsection, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle equal to the amount produced by applying one-half of the rate indicated in the schedule in subdivision (3) of this subsection to the weight in pounds on each axle group in excess of the maximum weight in pounds allowed, recyclable material for processing from point of origin to a scrap-processing facility. As used in this subdivision, "processing" has the same meaning as defined in G.S. 130A-290(a)(23) and "recyclable material" has the same meaning as defined in G.S. 130A-290(a)(26), that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.~~
- (5) ~~The civil penalties provided in this section shall constitute the sole penalty for violations of the weight limits in this section and violators thereof shall not be subject to criminal action except as provided in G.S. 20-96 and as provided in G.S. 136-72 for any vehicle or combination of vehicles exceeding the safe load-carrying capacity for bridges on the State Highway System as established and posted by the Department of Transportation. A violation of a weight limit in this section is not punishable under G.S. 20-176."~~

Sec. 15. G.S. 20-118(f) is repealed.

Sec. 16. G.S. 20-118(i) is repealed.

Sec. 17. G.S. 20-174.1(b) reads as rewritten:

"(b) Any person convicted of violating this section shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six months, or both, in the discretion of the court. Violation of this section is a Class 2 misdemeanor."

Sec. 18. G.S. 20-193 is repealed.

Sec. 19. Article 6 of Chapter 20 of the General Statutes is repealed.



**Sec. 20.** G.S. 20-218, as amended by Chapter 217 of the 1993 Session Laws, reads as rewritten:

"§ 20-218. Standard qualifications for school bus drivers; speed limit- limit for school buses and school activity buses.

(a) Qualifications. -- No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by children unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. -- ~~It shall be unlawful for any person to operate or drive a school bus loaded with children over the highways or public vehicular areas of North Carolina the State at a greater rate of speed than 45 miles per hour, except for school activity buses which are painted a different color from regular school buses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be hour.~~ It is unlawful to operate such drive a school activity bus loaded with children over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. -- ~~Any person violating this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than 30 days. A person who violates this section commits a Class 3 misdemeanor."~~

**Sec. 21.** G.S. 20-218.1 is repealed.

**Sec. 22.** G.S. 20-4.01(27) is amended by adding two new subparts to read:

"d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words 'School Bus' on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description."

**Sec. 23.** G.S. 20-218.2 reads as rewritten:

"§ 20-218.2. Speed limit for ~~activity buses for nonprofit purpose, nonprofit activity buses.~~

It shall be ~~is~~ unlawful for any person to operate to drive an activity bus for that is owned by a nonprofit organization for a nonprofit purpose which is being used for transportation of and is transporting persons in connection with nonprofit activities in excess of over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour. A person who violates this section commits a Class 3 misdemeanor.

Any person violating this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than 30 days."

Sec. 24. G.S. 20-219 is repealed.

Sec. 25. Article 8A of Chapter 20 of the General Statutes is repealed.

Sec. 26. G.S. 20-279.7A reads as rewritten:

"§ 20-279.7A. Forms to carry statement concerning perjury.

The Division of Motor Vehicles shall print on all forms provided to drivers covered by G.S. 20-279.5, 20-279.6, or 20-279.7 that a A person who makes a false affidavit or falsely sworn or affirmed statement constitutes perjury and may be punished by imprisonment for up to 10 years or a fine or both, concerning information required to be submitted under this Article commits a Class I felony. The Division shall include a statement of this offense on a form that it provides under this Article and that must be completed under oath."

Sec. 27. G.S. 20-279.34 is repealed.

Sec. 28. G.S. 20-309.1 is repealed.

Sec. 29. G.S. 20-310 is repealed.

Sec. 30. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-85. Termination of a nonfleet private passenger motor vehicle insurance policy.

(a) Definitions. -- The following definitions apply in this section:

(1) Policy. -- A nonfleet private passenger motor vehicle liability insurance policy, including a policy that provides medical payments, uninsured motorist, or underinsured motorist coverage, whose named insured is one individual or two or more individuals who reside in the same household.

(2) Terminate. -- To cancel or refuse to renew a policy.

(b) Termination Restrictions. -- An insurer shall not terminate a policy for a reason that is not specified in G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g). A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

An insurer is not required to send a written termination notice if any of the following applies:

(1) The insurer has manifested its willingness to renew the policy by issuing or offering to issue a renewal policy, a certificate, or other evidence of renewal.

(2) The insurer has manifested its willingness to renew the policy by any means not described in subdivision (1) of this subsection, including mailing a premium notice or expiration notice by first class mail to the named insured and the failure of the insured to pay the required premium on or before the premium due date.

(3) A named insured has given written notification to the insurer or its agent that the named insured wants the policy to be terminated.

(c) Contents of Notice. -- The form of a written termination notice used by an insurer must be approved by the Commissioner before it is used. A written termination notice must state the reason for the termination and the date the termination is effective. If the policy is terminated for nonpayment of the premium, the effective date may be 15 days from the date the notice is mailed. If the policy is terminated for any other reason, the effective date must be at least 60 days after the notice is mailed. A written termination notice must include or be accompanied by a statement that advises the insured of the penalty for driving a vehicle without complying with Article 13 of Chapter 20 of the General Statutes and that the insured has the right to request the Department to review the termination.

(d) Request for Review. -- An insured who receives from an insurer a written termination notice may obtain review of the termination by filing with the Department a written request for review within 10 days after receiving a termination notice that complies with subsection (c) of this section. An insured who does not file a request within the required time waives the right to a review.

(e) Administrative Review. -- When the Department receives a written request to review a termination, it must investigate and determine the reason for the termination. The Department shall enter an order for one of the following upon completing its review:

(1) Approval of the termination, if it finds the termination complies with the law.

(2) Renewal or reinstatement of the policy, if it finds the termination does not comply with the law.

(3) Renewal or reinstatement of the policy and payment by the insurer of the costs of the Department's review, not to exceed one thousand dollars (\$1,000), if it finds the termination does not comply with the law and the insurer willfully violated this section.

The Department shall mail a copy of the order to the insured and the insurer. An insured or an insurer who disagrees with the determination of the Department may file a petition for a contested case under Article 3A of Chapter 150B of the General Statutes and the rules adopted by the Commissioner to implement that Article. The petition must be filed within 30 days after receiving the copy of the order.

(f) Delegation. -- The Commissioner shall designate an employee or a deputy to conduct the departmental review of a termination. The Commissioner may designate a deputy to conduct a contested case hearing concerning a termination. The Commissioner may not designate a deputy who conducted the departmental review of a termination to conduct a contested case hearing concerning the same termination.

(g) Effect of Review on Policy. -- A policy shall remain in effect during administrative and judicial review of an insurer's action to terminate the policy.

(h) Liability Limit. -- There is no liability on the part of and no cause of action for defamation or invasion of privacy arises against an insurer, an insurer's authorized representatives, agents, or employees, or a licensed insurance agent or broker for a communication or statement made concerning a written notice of termination.

(i) Records. -- An insurer shall keep a record of a termination for three years."

Sec. 31. G.S. 20-310.2 is repealed.

Sec. 32. The title to Article 12E of Chapter 120 of the General Statutes reads as rewritten:

"ARTICLE 12E.

"Joint Legislative ~~Highway~~ Transportation Oversight Committee."

Sec. 33. G.S. 158-42(d) reads as rewritten:

"(d) Administration. -- The Division of Motor Vehicles of the Department of Transportation shall collect and administer a tax levied under this section. Immediately after adopting a resolution levying or repealing a tax under this section, the Commission shall deliver a certified copy of the resolution to the Division of Motor Vehicles. The tax is due at the same time and subject to the same restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in accordance with G.S. ~~20-66 and G.S. 20-95, as applicable.~~ 20-95. The Commissioner of Motor Vehicles may adopt rules necessary to administer the tax."

Sec. 34. G.S. 160A-623(g) reads as rewritten:

"(g) Vehicles Subject to Tax. Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this section. Taxes shall be prorated in accordance with G.S. ~~20-66 or G.S. 20-95, as applicable.~~ 20-95."

Sec. 34.1. G.S. 20-138.5 is amended by adding a new subsection to read:

"(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

- (1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.
- (2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest."

Sec. 35. Sections 1 and 34.1 of this act become effective October 1, 1994, and apply to offenses occurring on or after that date. Sections 2 through 4, 17, 20, 23, and 26 of this act become effective the same date that Chapter 539 of the 1993 Session Laws becomes effective and apply to

offenses committed on or after the effective date of Chapter 539; prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 are not abated or affected by these sections. Sections 29 through 31 of this act become effective February 1, 1995, and apply to policies written on or after that date. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

H.B. 1776

## CHAPTER 762

AN ACT TO REWRITE THE VOTER REGISTRATION LAWS OF NORTH CAROLINA AND TO MAKE OTHER ELECTION-LAW CHANGES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 7 of Chapter 163 of the General Statutes is repealed.

**Sec. 2.** Chapter 163 of the General Statutes is amended by adding a new Article to read:

### "ARTICLE 7A.

#### "Registration of Voters.

##### "§ 163-82.1. General principles of voter registration.

(a) Prerequisite to Voting. -- No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.

(b) County Board's Duty to Register. -- A county board of elections shall register, in accordance with this Article, every person qualified to vote in that county who makes an application in accordance with this Article.

(c) Permanent Registration. -- Every person registered to vote by a county board of elections in accordance with this Article shall remain registered until:

- (1) The registrant requests in writing to the county board of elections to be removed from the list of registered voters; or
- (2) The registrant becomes disqualified through death, conviction of a felony, or removal out of the county; or
- (3) The county board of elections determines, through the procedure outlined in G.S. 163-82.14, that it can no longer confirm where the voter resides.

##### "§ 163-82.2. Chief State Election Official.

The Executive Secretary-Director of the State Board of Elections is the 'Chief State Election Official' of North Carolina for purposes of P.L. 103-31, The National Voter Registration Act of 1993, subsequently referred to in this Article as the 'National Voter Registration Act'. As such the Executive Secretary-Director is responsible for coordination of State responsibilities under the National Voter Registration Act.

##### "§ 163-82.3. Voter registration application forms.



(a) Form Developed by State Board of Elections. -- The State Board of Elections shall develop an application form for voter registration. Any person may use the form to apply to do any of the following:

- (1) Register to vote;
- (2) Change party affiliation or unaffiliated status;
- (3) Report a change of address within a county;
- (4) Report a change of name.

The county board of elections for the county where the applicant resides shall accept the form as application for any of those purposes if the form is submitted as set out in G.S. 163-82.3.

(b) Interstate Form. -- The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section the interstate registration form designed by the Federal Election Commission pursuant to section 9 of the National Voter Registration Act, if the interstate form is submitted in accordance with G.S. 163-82.6.

(c) Agency Application Form. -- The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section a form developed pursuant to G.S. 163-82.19 or G.S. 163-82.20.

"§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. -- The form required by G.S. 163-82.3(a) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (8) Political party affiliation, if any, in accordance with subsection (c) of this section,
- (9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. -- The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

- (1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(a).
- (2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
- (3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. -- The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an 'unaffiliated' voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as 'unaffiliated', except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to 'unaffiliated' unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-116, but may vote in any other primary or general election. The application form shall so state.

"§ 163-82.5. Distribution of application forms.

The State Board of Elections shall make the forms described in G.S. 163-82.3 available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration drives.

"§ 163-82.6. Acceptance of application forms.

(a) How the Form May Be Submitted. -- The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person.

(b) Signature. -- The form shall be valid only if signed by the applicant.

(c) Registration Deadlines for an Election. -- In order to be valid for an election, the form:

- (1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,
- (2) If submitted in person (by the applicant or another person), must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

except as provided in subsection (d) of this section.

(d) Instances When Person May Register and Vote on Election Day. -- If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

- (1) A member of the county board of elections;
- (2) The county supervisor of elections; or
- (3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election-day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary. For purposes of this subsection, persons who 'become qualified to register and vote' during a time period:

- (1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but
- (2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period.

"§ 163-82.7. Verification of qualifications and address of applicant; denial or approval of application.

(a) Tentative Determination of Qualification. -- When a county board of elections receives an application for registration submitted pursuant to G.S. 163-82.6, the board either:

- (1) Shall make a determination that the applicant is not qualified to vote at the address given, or
- (2) Shall make a tentative determination that the applicant is qualified to vote at the address given, subject to the mail verification notice procedure outlined in subsection (c) of this section

within a reasonable time after receiving the application.

(b) Denial of Registration. -- If the county board of elections makes a determination pursuant to subsection (a) of this section that the applicant is not qualified to vote at the address given, the board shall send, by certified mail, a notice of denial of registration. The notice of denial shall contain

the date on which registration was denied, and shall be mailed within two business days after denial. The notice of denial shall inform the applicant of alternatives that the applicant may pursue to exercise the franchise. If the applicant disagrees with the denial, the applicant may appeal the decision under G.S. 163-82.18.

(c) Verification of Address by Mail. -- If the county board of elections tentatively determines that the applicant is qualified to vote at the address given, then the county board shall send a notice to the applicant, by nonforwardable mail, at the address the applicant provides on the application form. The notice shall state that the county will register the applicant to vote if the Postal Service does not return the notice as undeliverable to the county board. The notice shall also inform the applicant of the precinct and voting place to which the applicant will be assigned if registered.

(d) Approval of Application. -- If the Postal Service does not return the notice as undeliverable, the county board shall register the applicant to vote.

(e) Second Notice if First Notice Is Returned as Undeliverable. -- If the Postal Service returns the notice as undeliverable, the county board shall send a second notice by nonforwardable mail to the same address to which the first was sent. If the second notice is not returned as undeliverable, the county board shall register the applicant to vote.

(f) Denial of Application Based on Lack of Verification of Address. -- If the Postal Service returns as undeliverable the notice sent by nonforwardable mail pursuant to subsection (e) of this section, the county board shall deny the application. The county board need not try to notify the applicant further.

(g) Voting When Verification Process Is Incomplete. -- In cases where an election occurs before the process of verification outlined in this section has had time to be completed, the county board of elections shall be guided by the following rules:

- (1) If the county board has made a tentative determination that an applicant is qualified to vote under subsection (a) of this section, then that person shall not be denied the right to vote in person in an election unless the Postal Service has returned as undeliverable two notices to the applicant: one mailed pursuant to subsection (c) of this section and one mailed pursuant to subsection (e) of this section. This subdivision does not preclude a challenge to the voter's qualifications under Article 8 of this Chapter.
- (2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by mailed absentee ballot. The county board of elections shall establish a procedure at the voting site for:
  - a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and
  - b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already



voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163-89.

- (3) If a notice sent pursuant to subsection (c) or (e) of this section is returned by the Postal Service as undeliverable after a person has already voted in an election, then the county board shall treat the person as a registered voter but shall send a confirmation mailing pursuant to G.S. 163-82.14(d)(2) and remove or retain the person on the registration records in accordance with that subdivision.

"§ 163-82.8. Voter registration cards.

(a) Authority to Issue Card. -- With the approval of the board of county commissioners, the county board of elections may issue to each voter in the county a voter registration card, or may issue cards to all voters registered after January 1, 1995.

(b) Content and Format of Card. -- At a minimum, the voter registration card shall:

- (1) List the voter's name, address, and voting place;
- (2) Contain the address and telephone number of the county board of elections, along with blanks to report a change of address within the county, change of name, and change of party affiliation; and
- (3) Be wallet size.

No voter registration card may be issued by a county board of elections unless the State Board of Elections has approved the format of the card.

(c) Ways County Board and Registrant May Use Card. -- If the county board of elections issues voter registration cards, the county board may use that card as a notice of tentative approval of the voter's application pursuant to G.S. 163-82.7(c), provided that the mailing contains the statements and information required in that subsection. The county board may also satisfy the requirements of G.S. 163-82.15(b), 163-82.16(b), or 163-82.17(b) by sending the registrant a replacement of the voter registration card to verify change of address, change of name, or change of party affiliation. A registrant may use the card to report a change of address, change of name, or change of party affiliation, satisfying G.S. 163-82.15, 163-82.16, or 163-82.17.

(d) Card as Evidence of Registration. -- A voter registration card shall be evidence of registration but shall not preclude a challenge as permitted by law.

(e) Display of Card May Not Be Required to Vote. -- No county board of elections may require that a voter registration card be displayed in order to vote.

"§ 163-82.9. Cancellation of prior registration.

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or State, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or State and shall ask them to cancel the person's voter registration there.

"§ 163-82.10. Official record of voter registration.

(a) Application Form Becomes Official Record. -- A completed and signed registration application form described in G.S. 163-82.3, once



approved by the county board of elections, becomes the official registration record of the voter. The county board of elections shall maintain custody of the official registration records of all voters in the county and shall keep them in a place where they are secure.

(b) Access to Registration Records. -- Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, or any other reasonable category. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section.

(c) Free Lists. -- Free lists of all registered voters in the county shall be provided in the following cases:

- (1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:
  - a. The State chair of each political party; and
  - b. The county chair of each political partyonce in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.
- (2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, date of birth, race, political affiliation, voting history, and precinct of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, 'political party' means a political party as defined in G.S. 163-96.

"§ 163-82.11. Establishment of statewide computerized voter registration.

The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

The State Board of Elections shall develop and implement the system so that each county board of elections can:

- (1) Verify that an applicant to register in its county is not also registered in another county;
- (2) Be notified automatically that a registered voter in its county has registered to vote in another county; and

- (3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its own computer file of registered voters in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall transmit through the computer network all additions, deletions, and changes in its list of registered voters promptly to the statewide computer file. The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.

"§ 163-82.12. Promulgation of rules relating to computerized voter registration.

The State Board of Elections shall make all rules necessary to administer the statewide voter registration system established by this Article. These rules shall include provisions for:

- (1) Establishing, developing, and maintaining a computerized central voter registration file;
- (2) Linking the central file through a network with computerized voter registration files in each of the counties;
- (3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications;
- (4) Protecting and securing the data; and
- (5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.

"§ 163-82.13. Access to statewide voter registration file.

(a) Free Copy for Political Parties. -- Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163-96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, date of birth, race, voting history, political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) Copies for Sale to Others. -- Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom

any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it.

"§ 163-82.14. List maintenance.

(a) Uniform Program. -- The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

- (1) To remove the names of ineligible voters from the official lists of eligible voters, and
- (2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board.

(b) Death. -- The Department of Environment, Health, and Natural Resources, on or before the fifteenth day of March, June, September, and December, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county. The Department of Environment, Health, and Natural Resources shall base each list upon information supplied by death certifications it received during the preceding quarter. Upon the receipt of the certified list, the county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) Conviction of a Felony. --

- (1) Report of Conviction Within the State. -- The clerk of superior court, on or before the fifteenth day of March, June, September, and December of every year, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar quarter. Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible.
- (2) Report of Federal Conviction. -- The Executive Secretary-Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.
- (3) County Board's Duty Upon Receiving Report of Conviction. -- When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his

registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice the county board received pursuant to this subsection shall be *prima facie* evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) Change of Address. -- A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

- (1) Gives confirmation in writing of a change of address for voting purposes out of the county. 'Confirmation in writing' for purposes of this subdivision shall include:
  - a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;
  - b. A notice of cancellation received under G.S. 163-82.9; or
  - c. A notice of cancellation received from an election jurisdiction outside the State.
- (2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:
  - a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;
  - b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and
  - c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision if the registrant remains on the list, the registrant has not voted in two successive presidential elections or in any election in between, and the county board has not confirmed the registrant's address by another means. The county board may send a confirmation mailing in accordance with this subdivision if the registrant has been identified as residing outside the county through change-of-address information supplied by the Postal Service through its licensees.



"§ 163-82.15. Change of address within the county.

(a) Registrant's Duty to Report. -- No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of registration for an election as set out in G.S. 163-82.6(c). The registrant shall make the notification by means of a voter registration form as described in G.S. 163-82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and date of moving from the old to the new address.

(b) Verification of New Address by Mail. -- When a county board of elections receives a notice that a registrant in that county has changed residence within the same county, the county board shall send a notice, by nonforwardable mail, to the registrant at the new address. The notice shall inform the registrant of any new precinct and voting place that will result from the change of address, and it shall state whether the registrant shall vote at the new voting place during the upcoming election or at a later election. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall either: --

- (1) Send a second notice by nonforwardable mail to the new address and, if it is returned as undeliverable, send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2); or
- (2) Send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2) without first sending a second nonforwardable notice to the new address.

In either case, if the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. -- If the county board confirms the registrant's new address in accordance with subsection (b) of this section, the county board shall as soon as practical change the record to reflect the new address.

(d) Unreported Move Within the Same Precinct. -- A registrant who has moved from one address to another within the same precinct shall, notwithstanding failure to notify the county board of the change of address before an election, be permitted to vote at the voting place of that precinct upon oral or written affirmation by the registrant of the change of address before a precinct official at that voting place.

(e) Unreported Move to Another Precinct Within the County. -- If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the



county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections.

(f) When Registrant Disputes Registration Records. -- If the registration records indicate that the registrant has moved outside the precinct, but the registrant denies having moved from the address within the precinct previously shown on the records, the registrant shall be permitted to vote at the voting place for the precinct where the registrant claims to reside, if the registrant gives oral or written affirmation before a precinct official at that voting place.

(g) Precinct Transfer Assistants. -- The county board of elections shall either designate a board employee or appoint other persons to serve as precinct transfer assistants to receive the election-day transfers of the voters described in subsection (e) of this section. In addition, board members and employees may perform the duties of precinct transfer assistants. The State Board of Elections shall promulgate uniform rules to carry out the provisions of this section, and shall define in those rules the duties of the precinct transfer assistant.

*"§ 163-82.16. Change of name.*

(a) Registrant's Duty to Report. -- If the name of a registrant is changed in accordance with G.S. 48-36, G.S. 50-12, or Chapter 101 of the General Statutes, or if a married registrant assumes the last name of the registrant's spouse, the registrant shall not be required to re-register, but shall report the change of name to the county board not later than the last day for applying to register to vote for an election in G.S. 163-82.6. The registrant shall report the change on a form described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8 or in another written statement that is signed, contains the registrant's full names, old and new, and the registrant's current residence address.

(b) Verification of New Name by Mail. -- When a county board of elections receives a notice of name change from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the new name if the registrant does not respond that the name change is incorrect. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a confirmation notice as described in G.S. 163-82.14(d)(2).

If the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. -- If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application for the name change, the

county board shall as soon as practical change the record of the registrant's name to conform to that stated in the application.

(d) Unreported Name Change. -- A registrant who has not reported a name change in accordance with subsection (a) of this section shall be permitted to vote if the registrant reports the name change to the chief judge at the voting place, or to the county board along with the voter's application for an absentee ballot.

"§ 163-82.17. Change of party affiliation.

(a) Registrant's Duty to Report. -- Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration list shall, no later than the last day for making application to register under G.S. 163-82.6 before the election, indicate the change on an application form as described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for a primary, second primary, or special or general election after the deadline for registration applications for that election as set out in G.S. 163-82.6.

(b) Verification of Affiliation Change by Mail. -- When a county board of elections receives a notice of change of party affiliation or unaffiliated status from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the change of status if the registrant does not respond by stating that he does not desire a change in status. The notice shall also inform the registrant of the time that the change of affiliation status will occur, and shall explain the provisions of subsection (d) of this section. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a confirmation notice as described in G.S. 163-82.14(d)(2). If the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. -- If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application to change affiliated or unaffiliated status, the county board of elections shall as soon as practical change the record of the registrant's party affiliation, or unaffiliated status, to conform to that stated in the application. Thereafter the voter shall be considered registered and qualified to vote in accordance with the change, except as provided in subsection (d) of this section.

(d) Deadline to Change Status Before Primary. -- If a registrant applies to change party affiliation or unaffiliated status later than the last day for applying to register under G.S. 163-82.6 before a primary, the registrant shall not be entitled to vote in the primary of a party in which the registrant's status on that last day did not entitle the registrant to vote.

(e) Authority of County Board or Supervisor to Make Correction. -- If at any time the chairman or supervisor of elections of the county board of elections is satisfied that an error has been made in designating the party affiliation of any voter on the registration records, then the chairman or

supervisor of elections of the county board of elections shall make the necessary correction after receiving from the voter a sworn statement as to the error and the correct status.

"§ 163-82.18. Appeal from denial of registration.

(a) Right to Appeal. -- Any applicant who receives notice of denial of registration pursuant to G.S. 163-82.7 may appeal the denial within five days after receipt of the notice of denial. The county board of elections shall promptly set a date for a public hearing. The notice of appeal shall be in writing and shall be signed by the appealing party, shall include the appealing party's name, date of birth, address, and reasons for the appeal.

(b) Hearing Before County Board of Elections. -- The county board of elections shall set a date and time for a public hearing and shall notify the appealing party. Every person appealing to the county board of elections from denial of registration shall be entitled to a prompt and fair hearing on the question of the denied applicant's right and qualifications to register as a voter. All cases on appeal to a county board of elections shall be heard *de novo*.

Two members of the county board of elections shall constitute a quorum for the purpose of hearing appeals on questions of registration. The decision of a majority of the members of the board shall be the decision of the board. The board shall be authorized to subpoena witnesses and to compel their attendance and testimony under oath, and it is further authorized to subpoena papers and documents relevant to any matters pending before the board.

If at the hearing the board shall find that the person appealing from a denial of registration meets all requirements of law for registration as a voter in the county, the board shall enter an order directing that the appellant be registered and assign the appellant to the appropriate precinct. Not later than five days after an appeal is heard before the county board of elections, the board shall give written notice of its decision to the appealing party.

(c) Appeal to Superior Court. -- Any person aggrieved by a final decision of a county board of elections denying registration may at any time within 10 days from the date on which he receives notice of the decision appeal to the superior court of the county in which the board is located. Upon such an appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard *de novo* in the superior court in the manner in which other civil actions are tried and disposed of in that court.

If the decision of the court is that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that the plaintiff is entitled to be registered as a qualified voter in the precinct in which he originally made application to register, and in such case the plaintiff's name shall be entered in the registration book of that precinct. The court shall not order the registration of any person in a precinct in which he did not apply to register prior to the proceeding in court.

From the judgment of the superior court an appeal may be taken to the appellate division in the same manner as other appeals are taken from judgments of that court in civil actions.

"§ 163-82.19. Voter registration at drivers license offices.

The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections.

"§ 163-82.20. Voter registration at other public agencies.

(a) Voter Registration Agencies. -- Every office in this State which accepts:

- (1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;
- (2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or
- (3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law,

is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies. -- A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register to vote:

- (1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance;



- a. The voter registration application form described in G.S. 163-82.3(a) or (b); or
- b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163-82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to register.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(b1) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(c) Home Registration for Disabled. -- If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(d) Prohibitions. -- Any person providing any service under subsection (b) of this section shall not:

- (1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163-82.4(c) to be given if the applicant refuses to declare his party affiliation;
- (2) Display any such political preference or party allegiance;
- (3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
- (4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(e) Confidentiality of Declination to Register. -- No information relating to a declination to register to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(f) Transmittal From Agency to Board of Elections. -- Any voter registration application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.



(g) Twenty-Five-Day Deadline for an Election. -- Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(h) Ineligible Applications Prohibited. -- No person shall make application to register to vote under this section if that person is ineligible to vote on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony.

"§ 163-82.21. Voter registration at military recruitment offices.

The Executive Secretary-Director, jointly with the Department of Defense, shall develop and implement procedures for persons to apply to register to vote at recruitment offices of the armed forces of the United States in compliance with section 7(c) of the National Voter Registration Act.

"§ 163-82.22. Voter registration at public libraries.

Every library covered by G.S. 153A-272 shall make available to the public the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. Every library covered by G.S. 153A-272 shall designate at least one employee to assist voter registration applicants in completing the form during all times that the library is open.

"§ 163-82.23. Voter registration at public high schools.

Every public high school shall make available to its students and others who are eligible to register to vote the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education.

"§ 163-82.24. Statewide training for election officials.

The State Board of Elections shall conduct training programs in election law and procedures. Every county elections supervisor shall receive training conducted by the State Board at least as often as required in the following schedule:

- (1) Once during each odd-numbered year before the municipal election held in the county;
- (2) Once during each even-numbered year before the first partisan primary; and
- (3) Once during each even-numbered year after the partisan primaries but before the general election.

Every member of a county board of elections shall receive training conducted by the State Board at least once during the six months after the member's initial appointment and at least once again during the first two years of the member's service. The State Board of Elections shall promulgate rules for the training of precinct officials, which shall be followed by the county boards of elections.

"§ 163-82.25. Mandated voter registration drive.

The Governor shall proclaim as Citizens Awareness Month the month designated by the State Board of Elections during every even-numbered year. During that month, the State Board of Elections shall initiate a statewide voter registration drive and shall adopt rules under which county boards of elections shall conduct the drives. Each county board of elections shall participate in the statewide voter registration drives in accordance with the rules adopted by the State Board.

"§ 163-82.26. Rule-making authority.

The State Board of Elections shall promulgate rules necessary to implement the provisions of this Article."

Sec. 3. G.S. 163-41 reads as rewritten:

"§ 163-41. Precinct ~~registrars~~ chief judges and judges of election; ~~special registration commissioners~~; appointment; terms of office; qualifications; vacancies; oaths of office.

(a) Appointment of ~~Registrar~~ Chief Judge and Judges. -- At the meeting required by G.S. 163-31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as ~~registrar~~ chief judge and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the precinct for which appointed, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the ~~registrar~~ chief judge.

The term 'precinct official' shall mean ~~registrars~~ chief judges and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163-42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend two registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as ~~registrar~~ chief judge in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of

elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If, at any time other than on the day of a primary or election, a ~~registrar~~ chief judge or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed. If the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed ~~registrar~~ chief judge shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as ~~registrar~~ chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the ~~registrar~~ chief judge shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

As soon as practicable, following their training as prescribed in G.S. ~~163-80(d)~~, 163-82.24, each ~~registrar~~ chief judge and judge of ~~elections~~ election shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

'I, ....., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true

allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as ~~registrar~~ chief judge of (judge of ~~elections~~ election in) ..... precinct, ..... County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God.'

Notwithstanding the previous paragraph, a person appointed ~~registrar~~ chief judge by the judges of election under this section, or appointed judge of election by the ~~registrar~~ chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the ~~registrar~~ chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of ~~elections~~ election not previously sworn, substituting for the words '~~registrar~~ chief judge of' the words 'assistant in' or 'judge of ~~elections~~ election in' whichever is appropriate.

(b) ~~Appointment of Special Registration Commissioners. -- In each county the county board of elections shall appoint as special registration commissioners the persons required by the next paragraph of this subsection, and may appoint additional persons as special registration commissioners. Special registration commissioners shall serve a term to expire on the date on which registrars and judges are appointed pursuant to subsection (a) of this subsection, and may be removed with cause. A special registration commissioner for a county must be a registered voter of that county.~~

~~In each county, the county chairman of each of the two political parties having the greatest voter registration in the State may each, from time to time until the maximum number of special registration commissioners allowed by this sentence are appointed, recommend voters who are eligible and who are residents of the county for appointment as special registration commissioners in a number not to exceed:~~

~~(1) One per 2,500 (or major fraction) residents of the county according to the most recent decennial federal census; or~~

~~(2) Five, whichever is greater, but in no case greater than 100. If such recommendations are received by the county board of elections at least seven days prior to the next meeting of the county board of elections, the county board of elections shall at that meeting appoint as special registration commissioners the qualified persons on each list. The county board of elections shall meet within 45 days of receiving such nominations.~~

~~No person shall be eligible to serve as a special registration commissioner, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.~~



~~No person shall be eligible to serve as a special registration commissioner, who serves as chairman of any state, congressional district, county, or precinct political party or political organization.~~

~~No person shall be eligible to serve as a special registration commissioner who is a candidate for nomination or election.~~

~~No special registration commissioner who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as special registration commissioner during the period beginning when the person files a notice of candidacy or otherwise obtains ballot access and ending on the date of the primary if the candidate is on the primary ballot or ending on the day of the general election if the candidate is on the general election ballot. The county board of elections shall temporarily disqualify the special registration commissioner for that period and shall have authority to appoint a temporary substitute who is a member of the same political party, to serve until the special registration commissioner is no longer disqualified.~~

~~If the commissioner being temporarily replaced was appointed from a list of names which the board of elections was required to appoint one of, then the board of elections must appoint the temporary substitute from a list of two names submitted by the chairman of that political party.~~

~~Before being eligible to take the oath of office, each special registration commissioner must receive the same training in registering voters as is required of registrars and judges under G.S. 163-80(d).~~

~~Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:~~

~~'I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for \_\_\_\_\_ County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God.'~~

Special Registration Commissioners Abolished; Optional Training. -- The office of special registration commissioner is abolished. The State Board of Elections and county boards of elections may provide training to persons assisting in voter registration.

(b1) Repealed by Session Laws 1985, c. 387, s. 1.1.

(c) Publication of Names of Precinct Officials. -- Immediately after appointing registrars, judges, and special registration commissioners chief judges and judges as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. Notice may additionally



be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice."

Sec. 4. G.S. 163-47 reads as rewritten:

"§ 163-47. Powers and duties of ~~registrars~~ chief judges and judges of election.

(a) The ~~registrars~~ chief judges and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting. On the day of each primary and general and special election, the precinct ~~registrar~~ chief judge and judges shall remain at the voting place from the time fixed by law for the commencement of their duties there until they have completed all those duties, and they shall not separate nor shall any one of them leave the voting place except for unavoidable necessity.

(b) ~~The registrar shall have in his charge the actual registration of voters within his precinct and shall not delegate this responsibility. On the days required by law, he shall attend the voting place for the registration of new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe, not inconsistent with law. On the day of an election or primary, the registrar chief judge shall have charge of the registration book list for the purpose of passing on the registration of persons who present themselves at the polls to vote.~~

(c) The ~~registrars~~ chief judge and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The ~~registrars~~ chief judge and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The ~~registrars~~ chief judge and judges shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as is required by law.

(f) The ~~registrar~~ chief judge and judges of election shall act by a majority vote on all matters not assigned specifically by law to the ~~registrar~~ chief judge or to a judge."

Sec. 5. Wherever the term "registrar" appears in Chapter 163 of the General Statutes, the term shall be changed to read "chief judge".

Sec. 6. Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-36. Modified full-time offices.

The State Board of Elections shall promulgate rules permitting counties that have fewer than 14,001 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices."

Sec. 7. Article 10 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-116. Voting by unaffiliated voter in party primary.

If a political party has, by action of its State Executive Committee reported to the State Board of Elections by resolution delivered no later than the first day of December preceding a primary, provided that unaffiliated voters may

vote in the primary of that party, an unaffiliated voter may vote in the primary of that party by announcing that intention under G.S. 163-150(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective."

Sec. 8. G.S. 18B-601(i) reads as rewritten:

"(i) Observers. -- The proponents and opponents for an alcoholic beverage election, as determined by the local board of elections, shall have the right to appoint two ~~watchers~~ observers to attend each voting place. The persons authorized to appoint ~~watchers~~ observers shall, three days before the election, submit in writing to the ~~registrar~~ chief judge of each precinct a signed list of the ~~watchers~~ observers appointed for that precinct. The persons appointed as ~~watchers~~ observers shall be registered voters of the precinct for which appointed. The ~~registrar~~ chief judge and judges for the precinct may for good cause reject any appointee and require that another be appointed. ~~Watchers~~ Observers shall do no electioneering at the voting place nor in any manner impede the voting process, interfere or communicate with or observe any voter in casting his ballot. ~~Watchers~~ Observers shall be permitted in the voting place to make such observation and to take such notes as they may desire."

Sec. 9. G.S. 115C-506 reads as rewritten:

"§ 115C-506. *Action of board of county commissioners or governing body of municipality.*

Petitions requesting special school elections and bearing the approval of the board of education of the local school administrative unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition ~~before the close of the registration books, by the twenty-fifth day before the election,~~ and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminous with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this Article."

Sec. 10. G.S. 139-40 reads as rewritten:

"§ 139-40. *Conduct of election.*

(a) There shall be no new registration of voters for such an election. ~~The registration books~~ Registration shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections.

Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than ~~30~~ <sup>55</sup> days before and not more than ~~40~~ <sup>65</sup> days before, ~~the close of the registration books, before the election,~~ stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections.

(b) The form of the question shall be substantially the words 'For Watershed Improvement Tax of Not More Than ..... Cents Per One Hundred Dollar (\$100.00) Valuation,' and 'Against Watershed Improvement Tax of Not More Than ..... Cents Per One Hundred Dollar (\$100.00) Valuation,' which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voter may make a mark 'X' to designate the voter's choice for or against such tax, provided, the board of county commissioners may vary the aforesaid form of the question to be placed upon the ballot for the watershed improvement tax election in such manner as the board deems appropriate, and the board of elections shall cause to be placed upon the ballot such form of the question as may be requested by the board of county commissioners. The board of county commissioners shall designate the amount of the maximum annual rate of such tax to be levied, which amount may be less than but may not exceed twenty-five cents (25¢) on the one hundred dollar (\$100.00) valuation of property in the county, and said amount shall be stated on the ballot in the question to be voted upon. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked 'Watershed Improvement Tax Election'.

(c) The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State as provided for local elections.

(d) If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of such county is authorized to levy a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars (\$100.00) of assessed value of real and personal property taxable in said county, not to exceed the maximum rate of tax approved by the voters in such election, and the General Assembly does hereby give its special approval for the levy of such special tax."

**Sec. 11.** G.S. 158-17 reads as rewritten:

"§ 158-17. *Registration of voters; election under supervision of county board of elections.*

There shall be no new registration of voters for such an election. ~~The registration books~~ Registration shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular

general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than 30 55 days before and not more than 40 65 days before, ~~the close of the registration books, the election,~~ stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections."

**Sec. 12.** G.S. 163-22(o) reads as rewritten:

"(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for ~~registrars~~ chief judges and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots."

The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting."

**Sec. 13.** G.S. 163-31 reads as rewritten:

"§ 163-31. *Meetings of county boards of elections; quorum; minutes.*

In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in July in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Tuesday following the third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct ~~registrars~~ chief judges and judges of elections. The board may hold other meetings at such times as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business. The chairman shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the supervisor of elections to record and maintain the minutes under his supervision."

**Sec. 14.** G.S. 163-32 reads as rewritten:

"§ 163-32. *Compensation of members of county boards of elections.*

In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five



dollars (\$25.00) per meeting for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties; provided that members are not entitled to be compensated for more than one meeting held in any one 24-hour period. In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per meeting and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay supervisors of elections and ~~special registration commissioners~~ whatever compensation they may fix within budget appropriations."

**Sec. 15.** G.S. 163-33(2) reads as rewritten:

"(2) To appoint all ~~registrars~~, chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any ~~registrar~~, chief judge, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised."

**Sec. 16.** G.S. 163-35(d) reads as rewritten:

"(d) Duties. -- The supervisor of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. ~~In addition to any administrative duties the supervisor of elections shall be authorized to receive applications for registration and in pursuit of such authority shall be given the oath required of all registrars.~~ In addition, the supervisor of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its supervisor of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a supervisor of elections any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections the acts of a properly appointed supervisor of elections shall be deemed to be the acts of the county board of elections, its officers and members."

**Sec. 17.** G.S. 163-42 reads as rewritten:

"§ 163-42. *Assistants at polls; appointment; term of office; qualifications; oath of office.*



Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the ~~registrar~~ chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the precinct for which appointed. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within a precinct.

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the ~~registrar~~ chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Sec. 18. G.S. 163-43 reads as rewritten:

"§ 163-43. *Ballot counters; appointment; qualifications; oath of office.*

The county board of elections of any county may authorize the use of precinct ballot counters to aid the ~~registrars~~ chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct ~~registrar~~, chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of that precinct.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct ~~registrar~~ chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the ~~registrar~~, chief judge:

'I, ....., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true

allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in ..... precinct, ..... County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God.'

The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the ~~registrar~~, chief judge, shall be reported by the ~~registrar~~ chief judge to the county board of elections at the county canvass following the primary or election."

Sec. 19. G.S. 163-45 reads as rewritten:

"§ 163-45. *Observers; appointment.*

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, he or his campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the precinct for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the ~~registrar~~ chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the ~~registrar~~ chief judge for each affected precinct. He shall retain the other copy. The chairman, or the ~~registrar~~ chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the ~~registrar~~ chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or

observe any voter in casting his ballot, but, subject to these restrictions, the ~~registrar~~ chief judge and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an 'authorization to vote document' instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart."

**Sec. 20.** G.S. 163-46 reads as rewritten:

"§ 163-46. *Compensation of precinct officials and assistants.*

The precinct ~~registrar~~ chief judge shall be paid the state minimum wage for his services on the day of a primary, special or general election. Judges of election shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars (\$5.00) for their services on the day of a primary, general or special election.

~~Registrars~~ Chief judges shall be paid the sum of twenty dollars (\$20.00) per day and judges shall be paid the sum of fifteen dollars (\$15.00) per day for attendance at the county canvass, pursuant to G.S. 163-173; ~~or for attending the polling place for the purpose of registering voters upon instruction from the chairman of the county board of elections, 163-173.~~

The chairman of the county board of elections, along with the supervisor of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each ~~registrar~~ chief judge and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars (\$15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay ~~registrars,~~ chief judges, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as ~~registrar~~ chief judge, or judge of election when a previously appointed ~~registrar~~ chief judge or judge fails to appear at the voting place or leaves his post on the day of an election or primary shall be paid the same compensation as the ~~registrar~~ chief judge or judge appointed prior to that date.

For the purpose of this section, the phrase 'the State minimum wage,' means the amount set by G.S. 95-25.3(a). For the purpose of this section,

no other provision of Article 2A of Chapter 95 of the General Statutes shall apply."

**Sec. 21.** G.S. 163-48 reads as rewritten:

"§ 163-48. *Maintenance of order at place of registration and voting.*

The ~~registrar~~ chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.

In the discharge of the duties prescribed in the preceding paragraph of this section, the ~~registrar~~ chief judge and judges may call upon the sheriff, the police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election laws, but such arrest shall not prevent the person arrested from registering or voting if he is entitled to do so. The sheriff, ~~constables~~, police officers, and other officers of the peace shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The ~~registrar~~ chief judge and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at the place of registration or voting."

**Sec. 22.** G.S. 163-57 reads as rewritten:

"§ 163-57. *Residence defined for registration and voting.*

All ~~registrars and judges~~, election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

- (1) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.
- (2) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this State, for temporary purposes only, with the intention of returning.
- (3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.
- (4) If a person removes to another state or county within this State, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.
- (5) If a person removes to another state or county within this State, with the intention of remaining there an indefinite time and

making such state or county his place of residence, he shall be considered to have lost his place of residence in this State or the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.

- (6) If a person goes into another state or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.
- (7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.
- (8) If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resided at the time of his removal shall be considered and held to be his place of residence.
- (9) If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention.
- (10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.
- (11) So long as a student intends to make his home in the community where he is physically present for the purpose of attending school while he is attending school and has no intent to return to his former home after graduation, he may claim the college community as his domicile. He need not also intend to stay in the college community beyond graduation in order to establish his domicile there. This subdivision is intended to codify the case law."

**Sec. 23.** G.S. 163-59 reads as rewritten:

"§ 163-59. *Right to participate or vote in party primary.*

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. ~~163-74(a1)~~ 163-116 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.



Any person who will become qualified by age or residence to register and vote in the general election or regular municipal election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general or regular municipal election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. ~~163-67~~ 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election or regular municipal election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

**Sec. 24.** G.S. 163-84 reads as rewritten:

"§ 163-84. *Time for challenge other than on day of primary or election.*

The registration records of each county shall be open to inspection by any registered voter of the county, including any ~~registrar~~ chief judge or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is ~~open pursuant to G.S. 163-67~~ open. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge."

**Sec. 25.** G.S. 163-85(a) reads as rewritten:

"(a) Right to Challenge; When Challenge May Be Made. -- Any registered voter of the county may challenge the right of any person to register, remain registered or vote in such county. No such challenge may be made after the ~~close of the registration books, pursuant to G.S. 163-67,~~ twenty-fifth day before each primary, general, or special election."

**Sec. 26.** G.S. 163-87 reads as rewritten:

"§ 163-87. *Challenges allowed on day of primary or election.*

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163-85(c), or
- (2) That the person has already voted in that primary or election, or
- (3) That the person presenting himself to vote is not who he represents himself to be.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the ~~registrar~~ chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the

paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. ~~163-72.3~~, 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. ~~163-72.3~~ 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

**Sec. 27.** G.S. 163-88 reads as rewritten:

"§ 163-88. *Hearing on challenge made on day of primary or election.*

A challenge entered on the day of a primary or election shall be heard and decided by the ~~registrar~~ chief judge and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by sworn testimony, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the ~~registrar~~ chief judge shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

'You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ....., and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the ..... party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God.'

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the ~~registrar~~ chief judge or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word 'sworn.'

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths

or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged.

A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163-87."

**Sec. 28.** G.S. 163-88.1 reads as rewritten:

"§ 163-88.1. *Request for challenged ballot.*

(a) If the decision of the ~~registrar~~ chief judge and judges pursuant to G.S. 163-88 is to sustain the challenge, the challenged voter may request a challenged ballot by submitting an application to the ~~registrar~~ chief judge, such application shall include as part thereof an affidavit that such person possesses all the qualifications for voting and is entitled to vote at the election. The form of such affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) Any person requesting a challenged ballot shall have the letter 'C' entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled 'Challenged Ballot,' and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the ~~registrar~~ chief judge shall write across the top of the ballot 'Challenged Ballot # . . . . .,' and shall insert the same serial number as entered in the pollbook. The ~~registrar~~ chief judge shall deliver to such voter a challenged ballot together with an envelope marked 'Challenged Ballot' and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the ~~registrar~~ chief judge in such manner that the ~~registrar~~ chief judge shall not know how the ballot is marked. He shall then fold the ballot in the presence of the ~~registrar~~ chief judge so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the ~~registrar~~ chief judge. The ~~registrar~~ chief judge shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.

(c) The chairman of the county board of elections shall preserve such ballots in the sealed envelopes for a period of six months after the election. However, in the case of a contested election, either party to such action may request the court to order that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered, the board of elections shall then convene and consider each challenged ballot and rule as to which ballots shall be counted. In such consideration, the board may take such further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals."

**Sec. 29.** G.S. 163-89 reads as rewritten:

"§ 163-89. *Procedures for challenging absentee ballots.*

(a) Time for Challenge. -- The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00

P.M., or by the ~~registrar~~ chief judge at the time of closing of the polls as provided in G.S. ~~163-233~~ 163-232 and G.S. 163-251(b).

(b) Who May Challenge. -- Any registered voter of the same precinct as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. -- Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. -- Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the ~~registrar~~ chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the ~~registrar~~, chief judge, the ~~registrar~~ chief judge shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure. -- All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word 'challenged' after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word 'sustained' after the word 'challenged' following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked 'Challenge Sustained.' All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the ~~registrar~~ chief judge of the precinct and was sustained, the board shall reopen the appropriate ballot



boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot."

**Sec. 30.** G.S. 163-105 reads as rewritten:

"§ 163-105. *Payment of expense of conducting primary elections.*

The expense of printing and distributing the poll and registration books, blanks, and ballots for those offices required by G.S. 163-109(b) to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of primary election duties imposed by law upon that Board, shall be paid by the State.

The expenses of printing and distributing the ballots for those offices required by G.S. 163-109(c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of elections and the ~~registrars~~ chief judges and judges of election, while engaged in the discharge of primary election duties imposed by law upon them, shall be paid by the counties."

**Sec. 31.** G.S. 163-106(b) reads as rewritten:

"(b) Eligibility to File. -- No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. ~~163-74(b)~~, 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as 'unaffiliated' shall be ineligible to file as a candidate in a party primary election."

**Sec. 32.** G.S. 163-109(c) reads as rewritten:

"(c) Ballots to Be Furnished by County Board of Elections. -- It shall be the duty of the county board of elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

Superior court judge,

District court judge,

District attorney,

State Senator,

Member of the House of Representatives of the General Assembly, and

All county offices.

In printing primary ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

In its discretion, the county board of elections may print separate primary ballots for the district and county offices listed in this subsection, or it may combine some or all of them on a single ballot. In a primary election, if



there shall be 10 or more candidates for nomination to any one office, the county board of elections in its discretion may prepare a separate ballot for said office.

Three days before the primary election, the chairman of the county board of elections shall distribute official State, district, and county ballots to the ~~registrar~~ chief judge of each precinct in his county, and the ~~registrar~~ chief judge shall give him a receipt for the ballots received. On the day of the primary it shall be the ~~registrar's~~ chief judge's duty to have all the ballots delivered to him available for use at the precinct voting place."

**Sec. 33.** G.S. 163-128(a) reads as rewritten:

"(a) Each county shall be divided into a convenient number of precincts for the purpose of voting, and there shall be at least one precinct encompassed within the territory of each township; provided, however, that upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct within a township may be temporarily transferred, for the purpose of voting, to a precinct in an adjacent township. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one township to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside. Except as provided in G.S. 163-132.2(a)(1), the polling place for a precinct shall be located within the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 20 ~~45~~ days' notice thereof prior to the ~~date on which the registration books or records next close pursuant to G.S. 163-67,~~ next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice."

**Sec. 34.** G.S. 163-129 reads as rewritten:

"§ 163-129. *Structure at voting place; marking off limits of voting place.*

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be

construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the ~~registrar~~ chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place."

**Sec. 35.** G.S. 163-141 reads as rewritten:

"§ 163-141. *Sample ballots.*

Sample ballots of each kind to be voted in each primary and election shall be printed by the board of elections responsible for printing the official ballots. Sample ballots shall be printed on paper of a color different from that used for the official ballots, and each sample ballot shall have the words 'Sample Ballot' printed conspicuously on its face. Sample ballots shall be used for instructional purposes and shall not be used as official ballots.

The State Board of Elections shall distribute the sample ballots for which it is responsible to the county boards of elections at the time it distributes the official ballots; and the county board of elections, at the time it is required to distribute official ballots, shall furnish each precinct ~~registrar~~ chief judge with an adequate supply of the sample ballots prepared by the State Board of Elections as well as of those the county board is required to prepare."

**Sec. 36.** G.S. 163-142 reads as rewritten:

"§ 163-142. *Number of ballots to be furnished each voting place; packaging; date of delivery; receipt for ballots; accounting for ballots.*

The county board of elections shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to at least eighty percent (80%) of the number of persons registered to vote in the primary or election in the precinct. Provided that in those instances where precincts are provided with less than a number of ballots equal to one hundred percent (100%) of the number of voters registered to vote in the primary or election in the precinct, the responsible board of elections shall ensure that a number of additional ballots are stored in its offices for distribution to precincts where the need for additional ballots becomes evident so that a number of ballots equal to one hundred percent (100%) of the number of registered voters in the primary or election in each precinct is available.

Each kind of ballot shall be wrapped in a separate package or packages for each precinct voting place. The number of ballots to be placed in each package shall be determined by the chairman of the county board of elections, and the outside of each package shall be marked or stamped to show the kind of ballot and the number contained.

Three days before the primary or election, the county board of elections shall deliver to such precinct ~~registrar~~ chief judge the required number of

ballots of each kind to be voted in his precinct, and the ~~registrar~~ chief judge shall immediately give a receipt for the ballots delivered to him in accordance with the information marked or stamped on the ballot packages.

Within three days after the primary or election, the ~~registrar~~ chief judge shall deliver to the county board of elections all ballots spoiled in his precinct. At the same time he shall also deliver to the county board of elections all unused ballots from his precinct. Thereupon, the county board of elections shall make a check to ascertain whether the total of spoiled ballots and unused ballots, when added to the number of ballots cast in the precinct, equal the number of ballots furnished to and receipted for by the ~~registrar~~ chief judge prior to the primary or election.

The provisions of this section shall not apply to voting places at which voting machines are used."

**Sec. 37.** G.S. 163-143 reads as rewritten:

"§ 163-143. *Ballot boxes to be furnished each voting place; date of delivery; receipt for boxes.*

The county board of elections shall furnish each precinct voting place with a ballot box for each kind of ballot to be voted in the primary or election, together with one additional box in which spoiled ballots are to be deposited. Each box shall be plainly marked to indicate the ballots to be deposited therein, and the extra box to be delivered to each precinct shall be marked 'For Spoiled Ballots.'

Each ballot box shall be designed so that it may be locked and sealed and shall be constructed with an opening in the top large enough to allow a single ballot to be easily passed through, but no larger. At the time ballot boxes are delivered to the precinct, the chairman of the county board of elections shall furnish each ~~registrar~~ chief judge with a lock and proper seals for each box to be used in his precinct, with instructions as to how each box is to be securely locked and sealed in compliance with G.S. 163-171.

Three days before the primary or election, the county board of elections shall deliver to each precinct ~~registrar~~ chief judge the number of ballot boxes required for his precinct, and the ~~registrar~~ chief judge shall immediately give a receipt for them.

The provisions of this section shall not apply to voting places at which voting machines are used."

**Sec. 38.** G.S. 163-144 reads as rewritten:

"§ 163-144. *Lost, destroyed, damaged, and stolen ballots; replacement; report.*

Should official ballots furnished to any precinct in accordance with the provisions of this chapter be lost, destroyed, damaged, or stolen, the county board of elections, upon ascertaining that a shortage of ballots exists in the precinct, shall furnish the needed replacement ballots.

Within three days after the primary or election, the ~~registrar~~ chief judge of the precinct in which the loss occurred shall make a written report, under oath, to the county board of elections describing in detail the circumstances of the loss, destruction, damage, or theft of the ballots."

**Sec. 39.** G.S. 163-146 reads as rewritten:

"§ 163-146. *Voting enclosure at voting place; furnishings; arrangement.*

At each precinct voting place as described in G.S. 163-129, there shall be a room or area set apart as the voting enclosure. The limits of the voting enclosure shall be defined by walls, guardrails, or other boundary markers which at no point stand nearer than 10 feet nor farther than 20 feet from each ballot box or voting machine. This enclosure shall be arranged so that a single door or opening (not more than three feet wide) can be used as the entrance for persons seeking to vote.

Within the voting enclosure and in plain view of the qualified voters present at the voting place shall be placed:

- (1) A table or desk on which the ~~registrar~~ chief judge shall place and use the precinct registration books and records.
- (2) A table or desk on which the responsible judge shall place and superintend the ballots for distribution and the box for spoiled ballots.
- (3) A table or desk on which the responsible judge shall place and maintain the pollbook.
- (4) The ballot boxes.
- (5) The voting booths.

All voting booths and ballot boxes shall be placed in plain view of the ~~registrar~~ chief judge and judges as well as of the qualified voters present at the voting place.

The ~~registrar's~~ chief judge's table shall be placed near the entrance to the voting enclosure.

Each voting booth shall be located and arranged so that it is impossible for a voter in one booth to see a voter in another booth in the act of marking his ballots. Each voting booth shall be kept properly lighted and provided with pencils or pens for marking ballots.

In precincts in which voting machines are used, ballot boxes and voting booths shall not be used. Within the voting enclosure at the voting place in such a precinct, each machine shall be placed so that the exterior from all its sides is visible and so that whenever it is not in use by a voter the ballot labels on its face may be plainly seen by the precinct officials and assistants, and by observers appointed under the provisions of G.S. 163-45. Precinct election officials and assistants shall not place themselves, nor shall they permit any other person to place himself, in any position that will permit one to see or ascertain how a voter votes on a voting machine except when the voter obtains assistance as provided in this Chapter.

No political banner, poster, or placard shall be allowed in or upon the voting place during the day of a primary or election."

Sec. 40. G.S. 163-147(a) reads as rewritten:

"(a) No person or group of persons shall, while the polls are open at the voting place on the day of the primary or election, loiter about, congregate, distribute campaign material, or do any electioneering within the voting place, or within 50 feet in any direction of the entrance or entrances to the building in which the voting place is located. Notwithstanding the above provision, if the voting place is located in a large building, the ~~registrar~~ chief judge and judges of the precinct may designate the entrance to the voting place within said building and none of the above activity shall be permitted within 50 feet of said entrance or entrances of said voting place.



This section shall not, however, prohibit any candidate for nomination or election from visiting such voting place in person, provided he does not enter the voting enclosure except to cast his vote as a registered voter in said precinct. The county boards of elections and precinct ~~registrars~~ chief judges shall have full authority to enforce the provisions of this section."

**Sec. 41.** G.S. 163-148 reads as rewritten:

"§ 163-148. *Procedures at voting place before polls are opened.*

At least one-half hour before the time set for opening the polls for each primary and election, the judges of elections and assistants, shall meet the ~~registrar~~ chief judge at the precinct voting place, at which time the ~~registrar~~ chief judge shall administer to them the appropriate oaths set out in G.S. 163-41(a) and G.S. 163-42.

The ~~registrar~~ chief judge and judges shall arrange the voting enclosure according to the requirements of G.S. 163-146 and the instructions of the county board of elections. They shall then unlock the official ballot boxes, see that they are empty, allow authorized observers and other voters present to examine the boxes, and then they shall relock them while still empty. They shall open the sealed packages of ballots, and one of the judges, at the ~~registrar's~~ chief judge's request, shall announce that the polls are open and state the hour at which they will be closed.

If voting machines are used in the precinct, immediately before the polls are opened the ~~registrar~~ chief judge and judges shall open each voting machine, examine the ballot labels, and check the counters to see that they are set to indicate that no votes have been cast or recorded; at the same time, the precinct officials shall allow authorized observers and other voters present to examine the machines. If found to be in order and the ballot labels in proper form, the precinct officials shall lock and seal each machine, and it shall remain locked until after the polls are closed."

**Sec. 42.** G.S. 163-150 reads as rewritten:

"§ 163-150. *Voting procedures.*

(a) Checking Registration. -- A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-74(a1), 163-116, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the ~~registrar~~ chief judge shall state whether the person seeking to vote is duly registered.

(b) Distribution of Ballots; Information. -- If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in G.S. 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others, except that unaffiliated voters who are permitted to vote in a party primary under G.S. 163-74(a1) 163-116 shall be furnished



ballots for that primary. No such unaffiliated voter shall vote in the primary of more than one party on the same day. It shall be the duty of the ~~registrar~~ chief judge and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the ~~registrar~~ chief judge and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires.

(c) Act of Voting. -- When a person is given official ballots by the judge, he shall be deemed to have begun the act of voting, and he shall not leave the voting enclosure until he has deposited his ballots in the ballot boxes or returned them to the precinct officials. When he leaves the voting enclosure, whether or not he has deposited his ballots in the ballot boxes, he shall not be entitled to enter the voting enclosure again for the purpose of voting. On receiving his ballots, the voter shall immediately retire alone to one of the voting booths unless he is entitled to assistance under the provisions of G.S. 163-152, and without undue delay he shall mark his ballots in accordance with the provisions of G.S. 163-151.

(d) Spoiled and Damaged Ballots. -- If a voter spoils or damages a ballot, he may obtain another upon returning the spoiled or damaged ballot to the ~~registrar~~ chief judge. A voter shall not be given a replacement ballot until he has returned the spoiled or damaged ballot, and he shall not be given more than three replacement ballots in all. The ~~registrar~~ chief judge shall deposit each spoiled or damaged ballot in the box provided for that purpose.

(e) Depositing Ballots and Leaving Enclosure. -- When the voter has marked his ballots he shall leave the voting booth and deposit them in the appropriate boxes or hand them to the ~~registrar~~ chief judge or a judge who shall deposit them for him. If he does not mark a ballot he shall return it to one of the precinct officials before leaving the voting enclosure. If the voter has been challenged and the challenge has been overruled, before depositing his ballots in the boxes he shall write his name on each of his ballots so they may be identified in the event his right to vote is again questioned. After depositing his ballots in the ballot boxes, the voter shall immediately leave the voting enclosure unless he is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(f) Maintenance of Pollbook or Other Record of Voting. -- At each primary, general or special election, the precinct ~~registrar~~ chief judge shall appoint two precinct assistants (one from each political party as recommended by the county chairman thereof), one to be assigned to keep the pollbook or other voting record used in the county as approved by the State Board of Elections, and the other to keep the registration books under the supervision of the precinct officials. The names of all persons voting shall be checked on the registration records and entered on the pollbook or other voting record. In an election where observers may be appointed under G.S. 163-45 each voter's party affiliation shall be entered in the proper column of the book or other approved record opposite his name. The precinct assistant shall make each entry at the time the ballots are handed to the voter. As soon as the polls are closed, the ~~registrar~~ chief judge and judges of election shall sign the pollbook or other approved record

immediately beneath the last voter's name entered therein. The ~~registrar~~ chief judge or the judge appointed to attend the county canvass shall deliver the pollbook or other approved record to the chairman of the county board of elections at the time of the county canvass, and the chairman shall remain responsible for its safekeeping.

(g) Occupation of Voting Booth. -- Subject to the provisions of G.S. 163-152 and G.S. 163-152.1, no voter shall be allowed to occupy a voting booth or voting machine already occupied by another voter, provided, however, husbands and wives may occupy the same voting booth if both wish to do so. No voter shall be allowed to occupy a voting booth or voting machine more than five minutes if all the booths or machines are in use and other voters are waiting to obtain booths or machines."

**Sec. 43.** G.S. 163-152(a)(2) reads as rewritten:

"(2) Procedure for Obtaining Assistance: A person seeking assistance in a primary or general election shall, upon arriving at the voting place, first request the ~~registrar~~ chief judge to permit him to have assistance, stating his reasons. If the ~~registrar~~ chief judge determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the person he desires to help him and to whose assistance he is entitled under this section. The ~~registrar~~ chief judge shall thereupon request the person indicated to render the requested aid. The ~~registrar~~, chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by sub-subdivision (a)(1)b. of this section. Under no circumstances shall any precinct official be assigned to assist a voter who qualifies for assistance under this section, who was not specified by the voter."

**Sec. 44.** G.S. 163-152.1 reads as rewritten:

"§ 163-152.1. Assistance to blind voters in primaries and elections.

Any blind voter may record a certificate issued by the Department of Human Resources, by an optometrist or by a physician, stating that the named individual should be entitled to assistance as a blind voter. Upon receipt of such certification the ~~registrar or special registration commissioner~~ appropriate election official shall enter on the voter's registration record the words 'blind voter' so as to establish such fact and so as to entitle such voter to the same assistance in subsequent primaries and elections. The certification presented to the precinct ~~registrar or special registrar~~ chief judge, the county board of elections, or the person accepting the application to register shall be forwarded to the chairman of the county board of elections to be filed as a permanent record with the voter's duplicate registration record as required by G.S. 163-65."

**Sec. 45.** G.S. 163-153(1) reads as rewritten:

"(1) Officers of election, that is, members of the State Board of Elections, members of the county board of elections, supervisors of elections, and the precinct ~~registrar~~, chief judge, precinct judges of election, and assistants appointed for the precinct under the provisions of G.S. 163-42."

**Sec. 46.** G.S. 163-155 reads as rewritten:

"§ 163-155. *Aged and disabled persons allowed to vote outside voting enclosure.*

In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

- (1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct ~~registrar~~ chief judge which shall be in the following form:

'Affidavit of person voting outside voting place or enclosure.

State of North Carolina

County of \_\_\_\_\_

I do solemnly swear (or affirm) that I am a registered voter in \_\_\_\_\_ precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure.

I understand that a false statement as to my condition will subject me to a fine not to exceed one thousand dollars (\$1,000) or imprisonment not to exceed six months, or both.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Voter

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of assistant  
who administered oath.'

- (2) The ~~registrar~~ chief judge shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.
- (3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.
- (4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.
- (5) If there is no assistant appointed under G.S. 163-42 to perform the duties required by this section, the precinct ~~registrar~~ chief judge or one of the precinct judges, to be designated by the voter, if he

chooses, or, if he does not, by the precinct ~~registrar~~, chief judge, shall perform those duties.

A violation of this section is a Class 2 misdemeanor."

**Sec. 47.** G.S. 163-168 reads as rewritten:

"§ 163-168. *Proceedings when polls are closed.*

At the time set by G.S. 163-2 for closing the polls on the day of a primary, general or special election, the precinct ~~registrar~~ chief judge shall announce that the polls are closed, but any qualified voters who are then in the process of voting or who are in line at the voting place waiting to vote, whether or not they are within the voting enclosure or voting place boundaries, shall be allowed to vote.

At closing time, the ~~registrar~~, chief judge, or a judge designated by the ~~registrar~~, chief judge, shall enter into the pollbook, on a separate page labeled 'Persons Waiting to Vote at Closing Time in the Primary Election Held the . . . . . Day of. . . . , 19. . . . .', the names of all persons then in line at the voting place waiting to vote, beginning with the person last in line and proceeding to the person first in line at closing time. No persons shall be allowed to vote after closing time unless their names are so listed."

**Sec. 48.** G.S. 163-169 reads as rewritten:

"§ 163-169. *Counting ballots at precincts; unofficial report of precinct vote to county board of elections.*

(a) Instructions. -- Before each primary and election, the chairman of the county board of elections shall furnish each ~~registrar~~ chief judge written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in his precinct, the ~~registrar~~ chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) General Rule. -- Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the ~~registrar~~ chief judge and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(c) Right to Witness Precinct Count. -- The counting of the ballots in each box shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots.

(d) Counting to Be Continuous; Precinct Officials Not to Separate. -- As soon as the polls are closed the ~~registrar~~ chief judge and judges shall, without adjournment or postponement, open the ballot boxes and count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one box may be counted at the same time by the precinct officials, assistants, and ballot counters, but the ~~registrar~~ chief judge and judges shall supervise the counting of all boxes and shall be responsible for them. From the time the first ballot box is opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified as required by G.S. 163-173, and delivered to the ~~registrar~~ chief judge or judge chosen to deliver them to the county board

of elections, the precinct ~~registrar~~ chief judge and judges shall not separate, nor shall any one of them leave the voting place except for unavoidable necessity.

(e) Counting Primary Ballots. -- In a primary election the ballots shall be emptied on a table in full view of the precinct election officials, ballot counters, if used, and witnesses present. Identically marked ballots may be arranged in orderly piles to be counted. The results of those counts shall be stated aloud and the totals recorded on the tally sheet. For all other ballots, the name of each candidate voted for shall be read aloud distinctly, and the vote received by each candidate shall be tallied on the tally sheet. This procedure shall be followed for all boxes being counted.

(f) Counting General Election Ballots. -- In a general election the contents of a ballot box may be emptied upon a table and the ballots divided into two piles:

- (1) All those ballots marked in the circle of one political party to indicate a vote for all of the candidates of that party, that is, 'straight tickets,' which shall be so counted and tallied.
- (2) All those ballots marked for candidates of more than one political party, that is, 'split tickets,' which shall be called and tallied in the manner prescribed for counting primary ballots in subsection (e) of this section.

(g) Questioned Ballots. -- All questions arising with respect to how a ballot shall be counted or tallied shall be referred to the ~~registrar~~ chief judge and judges of election for determination before the completion of the counting of the ballots in the box from which the questioned ballot was taken.

(h) Unofficial Report of Precinct Returns. -- On the night of the primary or election, as soon as the votes have been counted and the precinct returns certified, the ~~registrar~~ chief judge, or one of the judges selected by the ~~registrar~~ chief judge, shall report the total precinct vote for each candidate, constitutional amendment, and proposition by telephone or otherwise to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary, or clerk to the county board of elections shall publish the reports to the press, radio, and television. The costs incurred in executing the provisions of this subsection shall be charged to the operating expense of the county board of elections.

(i) Absentee Ballots. -- Absentee ballots shall be deposited and voted in accordance with the provisions of G.S. 163-234; they shall be counted and tabulated as provided in this section and G.S. 163-170.

(j) Repealed by Session Laws 1977, c. 265, s. 12."

Sec. 49. G.S. 163-171 reads as rewritten:

"§ 163-171. *Preservation of ballots; locking and sealing ballot boxes; signing certificates.*

When the precinct count is completed after a primary or election, all ballots shall be put back in the ballot boxes from which they were taken, and the ~~registrar~~ chief judge and judges shall promptly lock and place a seal around the top of each ballot box, so that no ballot may be taken from or put in it. The ~~registrar~~ chief judge and judges shall then sign the seal on



each ballot box. In the alternative, the county board of elections may permit the precinct officials to put the counted ballots back in one ballot box or more to facilitate safekeeping provided the board prescribes an appropriate procedure to keep the different kinds of ballots separated in bundles or bags within the box.

Ballot boxes in which ballots have been placed and which have been locked and sealed as required by the preceding paragraph shall remain in the safe custody of the ~~registrar~~, chief judge, subject to the orders of the chairman of the county board of elections as to their disposition; provided that ballot boxes with paper ballots shall be delivered in person to the office of the county board of elections; provided further that in the case of paper ballots which have been counted either mechanically or electronically either the counting machines with the paper ballots sealed inside shall be delivered in person to the office of the county board of elections, or the paper ballots shall be placed in ballot boxes, sealed, and those boxes shall be delivered in person to the office of the county board of elections. The ballots and ballot boxes shall be delivered at a time specified by the county board of elections. No ballot box shall be opened except upon the written order of the county board of elections or upon a proper order of court.

Ballots cast in a primary or general election shall be preserved for at least two months after the primary or general election in which voted.

On each precinct return form there shall be printed a statement to be signed by the ~~registrar~~ chief judge and judges certifying that, after the precinct count was completed, each ballot box was properly locked, sealed, and the seals signed, as prescribed in this section, before the precinct officials left the voting place on the night of the primary or election.

Willful failure to securely lock, seal, and sign the seal on each ballot box on the night of any primary or election, and willful failure to sign the certificate on the duplicate return forms certifying that this was done, shall constitute a Class 2 misdemeanor.

In the event that a recount is requested as provided by law or there is other filing of an appeal of the election results, the county board of elections shall seal and secure the ballots, ballot boxes, and voting machines within a uniform period of time set by the State Board of Elections, to the extent that such actions have not already been taken as required by law. The aforementioned items shall then be stored in locations that are securely locked by members of the county board of elections. In counties that utilize voting machines or voting systems the county board of elections shall be required to store in one location that record on which the official vote cast is recorded."

**Sec. 50.** G.S. 163-173 reads as rewritten:

"§ 163-173. *How precinct returns are to be made.*

In each precinct, when the results of the counting of the ballots have been ascertained they shall be recorded in original and duplicate statements to be prepared, signed, and certified to by the ~~registrar~~ chief judge and judges on forms provided by the county board of elections.

One of the statements of the voting in the precincts shall be placed in a sealed envelope and delivered to the ~~registrar~~ chief judge or a judge selected by the precinct officials for the purpose of delivery to the county board of

elections for review at its meeting on the second day after the primary or election. The other copy of the statement shall either be mailed immediately or delivered in person immediately, as directed by the county board of elections, by one of the other two precinct election officials, to the chairman of the county board of elections or the supervisor of elections if authorized by the chairman to receive the statement.

Any ~~registrar~~ chief judge or judge appointed to deliver the certified precinct returns who shall fail to deliver them to the county board of elections by 12:00 noon, on the day the board meets to canvass the returns shall be guilty of a Class 2 misdemeanor, unless the failure resulted from illness or other good cause."

Sec. 51. G.S. 163-174 reads as rewritten:

"§ 163-174. *Registration and pollbooks to be returned to chairman of county board of elections.*

On the day preceding the county canvass or on the day of the county canvass, following each primary and election, as may be directed by the chairman of the county board of elections, the ~~registrar~~ chief judge (or judge appointed to bring in the precinct returns) shall deliver the precinct registration book or records and the pollbook to the chairman of the county board of elections at the time directed by the chairman."

Sec. 52. G.S. 163-213.7 reads as rewritten:

"§ 163-213.7. *Voting in presidential preference primary; ballots.*

The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an 'uncommitted' or 'no preference' status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an 'uncommitted' or 'no preference' status, but shall not be permitted to vote for candidates or 'uncommitted' status of a political party different from his registration. ~~Persons registered as 'Independents' or 'No Party' shall not participate in the presidential preference primary except upon changing such affiliation in accordance with law. Persons registered as 'Unaffiliated' shall not participate in the presidential primary except as provided in G.S. 163-116."~~

Sec. 53. G.S. 163-227.2 reads as rewritten:

"§ 163-227.2. *Alternate procedures for requesting application for absentee ballot; 'one-stop' voting procedure in board office.*

(a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2) or 163-226(a)(4) may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section.

(b) ~~Not earlier than the day following the day on which the registration books close~~ twenty-fourth day before an election, in which absentee ballots are authorized, in which he seeks to vote and not later than 5:00 P.M. on the Friday prior to that election, the voter shall appear in person only at the

office of the county board of elections and request that the chairman, a member, or the supervisor of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, supervisor of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, supervisor of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member or supervisor of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and 163-230(2) b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.

(e) The voter shall vote his absentee ballot in a voting booth and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative

provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote his absentee ballot in that room. The voting booth shall be in the office of the county board of elections. If the voter needs assistance in getting to and from the voting booth and in preparing and marking his ballots or if he is a blind voter, only a member of the county board of elections, the supervisor of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian shall be entitled to assist the voter.

(f) Notwithstanding the exception specified in G.S. ~~163-67(b)~~ 163-116, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time."

**Sec. 54.** G.S. 163-232 reads as rewritten:

"§ 163-232. *Certified list of executed absentee ballots; distribution of list.*

The chairman of the county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections. At the end of the list, the chairman shall execute the following certificate under oath:

'State of North Carolina

County of .....

I, ....., chairman of the ..... County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ..... day of ....., 19 ....., which have been approved by the county board of elections. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are filed in the office of the county board of elections; and I further certify that I have not delivered ballots for absentee voting to any person other than the voter himself, by mail or in person, except as provided by law, in the case of approved applications received after 5:00 P.M. on the Tuesday or Friday before the election.

This the ..... day of ....., 19 .....

.....  
(Signature of chairman of  
county board of elections)

Sworn to and subscribed before me this ..... day of ....., 19 .....  
Witness my hand and official seal.

.....  
(Signature of officer  
administering oath)

.....  
(Title of officer)'

No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the chairman shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as 'first-class' mail to the State Board of Elections, ~~Post Office Box 1166, Raleigh, N.C. 27602, Elections.~~ He shall retain one copy in the board office for public inspection and he shall cause two copies of the appropriate precinct list to be delivered to the ~~registrar~~ chief judge of each precinct in the county. The chairman shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the chairman shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The ~~registrar~~ chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the ~~registrar~~ chief judge shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration record. If such person is already recorded as having voted in that election, the ~~registrar~~ chief judge shall enter a challenge which shall be presented to the chairman of the county board of elections for resolution by the board of elections prior to certification of results by the board.

All lists required by this section shall be retained by the county board of elections for a period of four years after which they may then be destroyed."

**Sec. 55.** G.S. 163-234(5) reads as rewritten:

"(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated 'Pollbook of Absentee Voters' the name of the absentee voter. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot.

After all ballots have been placed in the boxes, the counting process shall begin.

If a challenge transmitted to the board on canvass day by a ~~registrar~~ chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The chairman shall be responsible for the safekeeping of the pollbook of absentee voters."

**Sec. 56.** G.S. 163-251(b) reads as rewritten:

"(b) Distribution of List. -- No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the chairman shall cause one copy of the list of executed military absentee ballots, which



may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as first-class mail to the State Board of Elections, ~~Post Office Box 1166, Raleigh, North Carolina 27602.~~ Elections. The chairman shall retain one copy in the board office for public inspection and he shall cause two copies of the appropriate precinct list to be delivered to the registrar chief judge of each precinct in the county. The registrar chief judge shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the registrar chief judge shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration record, if any. If such person is already recorded as having voted in that election, the registrar chief judge shall enter a challenge which shall be presented to the chairman of the county board of elections for resolution by the board of elections prior to certification of results by the board."

**Sec. 57.** G.S. 163-251(c) reads as rewritten:

"(c) List Constitutes Registration. -- The 'List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued' prescribed by this section, when delivered to the registrars chief judges of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Registrars Chief judges shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts."

**Sec. 58.** (a) G.S. 163-274(1) reads as rewritten:

"(1) For any person to fail, as an officer or as a judge or registrar chief judge of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;"

(b) G.S. 163-274(2) reads as rewritten:

"(2) For any person to continue or attempt to act as a judge or registrar chief judge of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;"

(c) G.S. 163-274(4) reads as rewritten:

"(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any registrar chief judge or judge of election in the performance of his duties as imposed by law;"

(d) G.S. 163-275(8) reads as rewritten:

"(8) For any registrar chief judge or any clerk or copyist to make any entry or copy with intent to commit a fraud;"

(e) G.S. 163-275(10) reads as rewritten:

"(10) For any person to assault any ~~registrar~~, chief judge, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;"

(f) G.S. 163-275(11) reads as rewritten:

"(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any ~~registrar~~, chief judge, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;"

(g) G.S. 163-275(12) reads as rewritten:

"(12) For any ~~registrar~~, chief judge, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;"

(h) This section applies to offenses committed on or after January 1, 1995.

**Sec. 59.** G.S. 163-280(c) reads as rewritten:

"(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct ~~registrars~~ chief judges and judges of elections. The municipal board of elections may then or at any time thereafter appoint a supervisor of elections, who shall have all of the powers and duties of a supervisor of elections to a county board of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business."

**Sec. 60.** G.S. 163-281 reads as rewritten:

"§ 163-281. *Municipal precinct election officials.*

(a) ~~Registrars~~ Chief Judges and Judges. -- At the meeting required by G.S. 163-280(c), the municipal board of elections shall appoint one person to act as ~~registrar~~ chief judge and two other persons to act as judges of election for each precinct in the city. Not more than one judge in each precinct where there are registered voters of more than one political party shall belong to the same political party as the ~~registrar~~, chief judge, if the municipal elections are on a nonpartisan or partisan basis. If the city and county precincts are identical and the board so chooses, it may decline to exercise its power to appoint precinct ~~registrar~~ chief judge and judges, in which event the persons appointed by the county board of elections as precinct ~~registrar~~ chief judge and judges in each precinct within the city shall serve as such for municipal elections under authority and subject to the supervision and control of the municipal board of elections. Nothing herein shall prohibit a municipal board of elections from using the ~~registrar~~ chief judge and judges of election appointed by the county board of elections in those precincts which are not identical provided the county board of elections

agrees, in writing, to such arrangement. ~~Registrars~~ Chief judges and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct ~~registrar~~ chief judge and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct ~~registrar~~ chief judge and judges by G.S. 163-41(a), G.S. 163-47, and G.S. 163-48. Municipal precinct ~~registrar~~ chief judge and judges shall not have the powers and duties with respect to registration of voters prescribed by G.S. 163-47(b). Immediately after appointing ~~registrar~~ chief judge and judges as herein provided, the municipal board of elections shall publish the names of the persons appointed in some newspaper having a general circulation in the city, or in lieu thereof, by posting at the city hall or some other prominent place within the city, and shall notify each person appointed of his appointment. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Assistants at Polls. -- Municipal boards of elections shall have the same authority to appoint assistants to aid the ~~registrar~~ chief judge and judges as is conferred on county boards of elections by G.S. 163-42.

(c) Ballot Counters. -- Municipal boards of elections shall have the same authority to appoint ballot counters as is conferred on county boards of elections by G.S. 163-43.

(d) Markers. -- Municipal boards of elections shall not appoint markers, and markers shall not be used in municipal elections.

(e) Observers. -- In cities holding partisan municipal elections, the chairman of each political party in the county shall have the same authority to appoint observers for municipal elections as he has for county elections under G.S. 163-45.

(f) Compensation. -- Precinct officials and assistants appointed under this section shall be paid such sums as the city council may fix. County precinct officials and assistants serving in municipal elections in default of appointment of precinct officials by the municipal board of elections shall be compensated by the city in the sums specified in G.S. 163-46.

(g) Party Chairman Not to Recommend Persons for Appointment. -- No municipal, county, State or national chairman of any political party shall have the right to recommend to the municipal board of elections the name of any person for appointment as a precinct ~~registrar~~ chief judge, judge of elections, assistant or ballot counter.

(h) Designation of Precincts in Which Officials to Serve. -- The municipal board of elections may designate the precinct in which each ~~registrar~~ chief judge, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any ~~registrar~~ chief judge, judge, assistant, ballot counter, observer, supervisor of elections or other officers of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(i) Powers and Duties. -- Except as otherwise provided in this Chapter, precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by the municipal board of elections shall have the same powers and duties with respect to municipal elections as

precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by county boards of elections."

**Sec. 61.** Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41.

**Sec. 62.** G.S. 163-283 reads as rewritten:

"§ 163-283. *Right to participate or vote in party primary.*

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. ~~163-74(a)~~ 163-116 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. ~~163-67~~ 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

**Sec. 63.** G.S. 163-285(3) is repealed.

**Sec. 64.** G.S. 163-286 reads as rewritten:

"§ 163-286. *Conduct of municipal and special district elections; application of Chapter 163.*

(a) To the extent that the laws, rules and procedures applicable to the conduct of primary, general and special elections by county boards of elections under Articles 3, 4, 5, 6, ~~7~~, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles.

(b) Any city, town or incorporated village which elects to conduct its own elections, under the provisions of G.S. 163-285, shall comply with the requirements contained in G.S. 163-280 and G.S. 163-281."

**Sec. 65.** G.S. 163-287 reads as rewritten:

"§ 163-287. *Special elections; procedure for calling.*

Any city, whether its elections are conducted by the county board of elections or the municipal board of elections, or any special district shall



have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 20 45 days prior to ~~the date on which the registration books or records close for~~ the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections."

Sec. 66. G.S. 163-288 reads as rewritten:

"§ 163-288. *Registration for city elections; county and municipal boards of elections.*

~~(a) Where the county board of elections conducts the municipal election, Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national.~~

~~(b) Where the municipal board of elections conducts the elections, each such municipality shall purchase only those loose-leaf binders for the registration records that have been approved by the State Board of Elections.~~

~~The loose-leaf registration forms shall be those approved by the State Board of Elections. When completed by each municipal registrant, the forms shall be the official registration record in each municipality and shall be kept in agreement with the county registration records for that registrant. They shall be prepared, completed, maintained and kept current pursuant to the same provisions of Article 7, Chapter 163, as apply to registration records of county boards of elections. They also shall be furnished by the State Board of Elections, through the respective county boards of elections, to the municipalities.~~

~~Every municipal board of elections conducting the elections in any city, town, or incorporated village shall secure and install those binders and loose-leaf forms required by this section no later than January 1, 1973, or no later than 90 days after any such municipality elects to conduct its own elections.~~

~~(c) Registration of voters and preparation of registration books for city elections in cities electing to conduct their own elections shall be conducted under one of the following alternative methods:~~



~~(1) METHOD A. -- A permanent, full-time registration office shall be established in a convenient place within a city, and the municipal board of elections shall appoint a special registration commissioner to be in charge of the office, and the commissioner shall have full power and authority to register voters who reside within the city without regard to their precinct or county of residence. A municipal board of elections may appoint special registration commissioners notwithstanding the population limitation contained in G.S. 163-67(b).~~

~~(2) METHOD B. -- The municipal board of elections may contract with the county board of elections to prepare two extra sets of registration forms for each person who registers with the county board of elections and who resides in the municipality which negotiates such agreement. Any such agreement shall be in writing and shall be on such terms as is agreeable to the majority of the county board of elections involved.~~

~~(3) (For effective date see note) METHOD C. -- The county board of elections shall permit the municipal board of elections to copy county registration books from the precinct binder record or from the duplicate required to be maintained by said county board of elections. During the period beginning on the last day for making application to register under G.S. 163-67, the municipal board of elections shall compare the municipal registration books with the appropriate county books and shall add or delete registration certificates in order that the city and county records shall agree. The precincts established for municipal elections may differ from those established by the county board of elections.~~

~~(4) METHOD D. -- The county board of elections may, in its sole discretion, deliver to the municipal board of elections the county precinct registration books for each precinct wholly or partially located within the city, and these books shall be used in conducting the municipal elections.~~

~~(d) The State Board of Elections shall have authority to promulgate rules and regulations for the detailed administration of each alternative method of registration offered by this section.~~

~~(e) Each city, town or incorporated village electing to conduct its own elections shall select one of the registration methods offered by this section by joint agreement with the appropriate county boards of elections, subject to the approval of the State Board of Elections. The selection of method shall be evidenced by concurrent resolutions of the city council and each affected county board of elections, which shall be filed with the State Board of Elections, and which shall become effective upon the State Board's approval thereof. Provided, however, if METHOD A is selected, the municipal board of elections shall only be required to send a copy of the resolution to the State Board of Elections and the county board of elections. If the city and the county board of elections fail to agree then METHOD C shall be used."~~

Sec. 67. G.S. 163-288.2 reads as rewritten:

"§ 163-288.2. *Registration in area proposed for incorporation or annexed.*

(a) Whenever the General Assembly incorporates a new city and provides in the act of incorporation for a referendum on the question of incorporation or for a special election for town officials or for both, or whenever an existing city or special district annexes new territory under the provisions of Chapter 160A, Article 4A, or other general or local law, the board of

elections of the county in which the proposed city is located or in which the newly annexed territory is located shall determine those individuals eligible to vote in the referendum or special election or in the city or special district elections. In determining the eligible voters the board may, in its discretion, use either of the following methods:

**METHOD A.** -- The board of elections shall prepare a list of those registered voters residing within the proposed city or newly annexed territory. The board shall make this list available for public inspection in its office for a two-week period ending on the ~~last day for making application to register under G.S. 163-67~~ twenty-fifth day before the day of the referendum or special election, or the next scheduled city or special district election. During this period, any voter resident within the proposed city or newly annexed territory and not included on the list may cause his name to be added to the list. At least one week and no more than two weeks before the day the period of public inspection is to begin, the board shall cause notice of the list's availability to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state that the list has been prepared, that only those persons listed may vote in the referendum or special election, that the list will be available for public inspection in the board's office, that any qualified voter not included on the list may cause his name to be added to the list during the two-week period of public inspection, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

**METHOD B.** -- The board of elections shall conduct a special registration of eligible persons desiring to vote in the referendum or special election or in the newly annexed territory. The registration records shall be open for a two-week period (except Sundays) ending on the ~~last day for making application to register under G.S. 163-67~~ twenty-fifth day before the day of the referendum or special election or the next scheduled city or special district election. On the two Saturdays during that two-week period, the records shall be located at the voting place for the referendum or special election or the next scheduled city or special district election; on the other days it may, in the discretion of the board, be kept at the voting place, at the office of the board, or at the place of business of a person designated by the board to conduct the special registration. At least one week and no more than two weeks before the day the period of special registration is to begin, the board shall cause notice of the registration to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state the purpose and times of the special registration, the location of the registration records, that only those persons registered in the special registration may vote in the referendum or special election, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or

special district elections in the newly annexed territory. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Only those persons registered pursuant to this section may vote in the referendum or special election, provided, however, that in cases where voters are activated under either Method A or B to vote in a city or special district that annexes territory, the city or special district shall permit them to vote in the city or special district's election and shall, as well, permit other voters to vote in such elections who did not register under the provisions of this section if they are otherwise registered, qualified and eligible to vote in the same."

**Sec. 68.** G.S. 163-295 reads as rewritten:

"§ 163-295. *Municipal and special district elections; application of Chapter 163.*

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles."

**Sec. 69.** G.S. 163-132.1, which was enacted by Section 205(a) of Chapter 757 of the 1985 Session Laws (First Session 1985) and was repealed by Section 2 of Chapter 1074 of the 1987 Session Laws (Regular Session 1988) is reenacted and reads as rewritten:

"§ 163-132.1. ~~Voluntary participation~~ Participation in Block Boundary Suggestion Program. ~~Program of the United States Bureau of the Census. --~~ The State of North Carolina shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census to the end that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. Not later than December 1, 1985, 1995, the Legislative Services Office shall ~~poll~~ send preliminary maps produced by the Census Bureau in preparation for the 2000 Census to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a major physical feature, as identified under the criteria to be established pursuant to 13 U.S.C. § 141 (c), a current township boundary, or a current municipal boundary, boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

- (1) assist county boards of elections in identifying the precincts with those nonconforming boundaries; boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;
- (2) place those boundaries and features on maps deemed appropriate by the State Board;
- (3) request the U.S. Census Bureau to hold for census block identification in the 1990 2000 U.S. Census all major physical

~~features on the map near the nonconforming precinct boundary;~~  
physical features the county boards have identified as current or  
potential precinct boundaries; and

- (4) request the U.S. Census Bureau to hold for census block identification in the ~~1990~~ 2000 U.S. Census all other ~~major~~ physical features already on U.S. Census Bureau maps.

In addition to the directives promulgated by the Executive Secretary-Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section."

**Sec. 70.** G.S. 163-132.2(a)(1)c. reads as rewritten:

"c. The following visible physical features, readily distinguishable upon the ground:

1. Roads or streets;
2. Water features or drainage features;
3. Ridgelines;
4. Ravines;
5. Jeep trails;
6. Rail features; ~~or~~
7. Above-ground power ~~lines~~ lines; or
8. Major footpaths

as certified by the North Carolina Department of Transportation on its highway maps or the ~~planning department~~ county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps."

**Sec. 71.** G.S. 163-132.3(a)(3) reads as rewritten:

"(3) The following visible physical features, readily distinguishable upon the ground:

- a. Roads or streets;
- b. Water features or drainage features;
- c. Ridgelines;
- d. Ravines;
- e. Jeep trails;
- f. Rail features; ~~or~~
- g. Above-ground power ~~lines~~ lines; or
- h. Major footpaths

as certified by the North Carolina Department of Transportation on its highway maps or the ~~planning department~~ county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps."

**Sec. 72.** Notwithstanding the language of G.S. 163-72.4(c), a voter registration application is valid if, before January 1, 1995, the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person. The form shall be valid only if signed by the applicant. Before January 1, 1995, in order to be valid for an election, the form:

- (1) If submitted by mail, must be postmarked at least 29 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 25 days before the election,
- (2) If submitted in person (by the applicant or another person), must be received by the county board of elections by 5:00 p.m. on the twenty-ninth day before the election.

Sec. 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences. G.S. 163-82.20(a)(3) and G.S. 163-82.20(b1) as enacted in Section 2 of this act expire January 1, 1996.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

H.B. 619

### CHAPTER 763

AN ACT TO MAKE PERMANENT THE LAW REGARDING ATTORNEYS' FEES IN ACTIONS RELATING TO LIENS ON REAL PROPERTY, AND TO CLARIFY THAT AN AGREEMENT TO ARBITRATE A DISPUTE IS NOT CONSIDERED AN UNENFORCEABLE CONTRACT REQUIRING WAIVER OF A JURY TRIAL.

*The General Assembly of North Carolina enacts:*

Section 1. Section 4 of Chapter 1010 of the 1991 Session Laws reads as rewritten:

"Sec. 4. Section 1 of this act is effective upon ratification and applies to actions filed on or after the date of ratification. Section 2 of this act is effective upon ratification. Section 3 of this act is effective upon ratification and applies to actions filed on or after the date of ~~ratification but before July 1, 1994.~~ ratification."

Sec. 2. G.S. 22B-10 reads as rewritten:

"§ 22B-10. *Contract provisions waiving jury trial unenforceable.*

Any provision in a contract requiring a party to the contract to waive his right to a jury trial is unconscionable as a matter of law and the provision shall be unenforceable. This section does not prohibit parties from entering into agreements to arbitrate or engage in other forms of alternative dispute resolution."

Sec. 3. Section 2 of this act becomes effective October 1, 1993, and applies to any pending litigation filed on or after that date. The remainder of this act becomes effective June 30, 1994.

In the General Assembly read three times and ratified this the 16th day of July, 1994.



## AN ACT TO AMEND THE LAWS REGARDING COMPUTER-RELATED CRIME.

*The General Assembly of North Carolina enacts:*

Section 1. Article 60 of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 60.

"Computer-Related Crime.

"§ 14-453. Definitions.

As used in this ~~section~~, Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Access' means to ~~approach~~, instruct, communicate with, cause input, cause output, cause data processing, or otherwise make use of any resources of a computer, ~~computer system~~ computer system, or computer network.
- (1a) 'Authorization' means having the consent or permission of the owner, or of the person licensed or authorized by the owner to grant consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.
- (2) 'Computer' means an internally programmed, automatic device that performs data ~~processing~~, processing or telephone switching.
- (3) 'Computer network' means the interconnection of communication systems with a computer through remote terminals, or a complex consisting of two or more interconnected computers, computers or telephone switching equipment.
- (4) 'Computer program' means an ordered set of data that are coded instructions or statements that when executed by a computer cause the computer to process data.
- (5) 'Computer software' means a set of computer programs, procedures and associated documentation concerned with the operation of a ~~computer system~~, computer, computer system, or computer network.
- (6) 'Computer system' means a set of related, connected or unconnected computer equipment and devices, at least one computer together with a set of related, connected, or unconnected peripheral devices.
- (6a) 'Data' means a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer system, or computer network. Data may be embodied in any form including, but not limited to, computer printouts, magnetic storage media, and punch cards, or may be stored internally in the memory of a computer.
- (7) 'Financial statement' instrument includes ~~but is not limited to~~ any check, draft, money order, certificate of deposit, letter of

credit, bill of exchange, credit card ~~of [or]~~ or marketable security, or any electronic data processing representation thereof.

- (8) 'Property' includes ~~but is not limited to,~~ financial instruments, information, including electronically processed or produced data, and computer software and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
- (8a) 'Resource' includes peripheral devices, computer software, computer programs, and data, and means to be a part of a computer, computer system, or computer network.
- (9) 'Services' ~~includes, but is not limited to,~~ includes computer time, data processing and storage functions.

"§ 14-454. *Accessing computers.*

(a) ~~A person is guilty of a Class H felony if he~~ It is unlawful to willfully, directly or indirectly, accesses or causes access or cause to be accessed any computer, computer system, computer network, or any part thereof, for the purpose of:

- (1) Devising or executing any scheme or artifice to defraud, unless the object of the scheme or artifice is to obtain educational testing material, a false educational testing score, or a false academic or vocational grade, or
- (2) Obtaining property or services other than educational testing material, a false educational testing score, or a false academic or vocational grade for ~~himself or another,~~ a person, by means of false or fraudulent pretenses, representations or promises.

A violation of this subsection is a Class G felony if the fraudulent scheme or artifice results in damage of more than one thousand dollars (\$1,000), or if the property or services obtained are worth more than one thousand dollars (\$1,000). Any other violation of this subsection is a Class I misdemeanor.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer system, or ~~computer network, or any part thereof,~~ network for any purpose other than those set forth in subsection (a) above, is guilty of a misdemeanor.

(c) For the purpose of this section, the term 'accessing or causing to be accessed' includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network.

~~"§ 14-455. *Damaging computers and related materials.*~~ computers, computer systems, computer networks, and resources.

(a) ~~A person is guilty of a Class H felony if he~~ It is unlawful to willfully and without authorization alters, damages or destroys ~~alter, damage, or destroy~~ a computer, computer system, computer network, or any part thereof. A violation of this subsection is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars (\$1,000). Any other violation of this subsection is a Class I misdemeanor.

~~(b) A person is guilty of a misdemeanor if he willfully and without authorization alters, damages, or destroys any computer software, program or data residing or existing internal or external to a computer, computer system or computer network.~~

(b) This section applies to alteration, damage, or destruction effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network.

*"§ 14-456. Denial of computer services to an authorized user.*

(a) Any person who willfully and without authorization denies or causes the denial of computer system services to an authorized user of such computer system services, is guilty of a misdemeanor, computer, computer system, or computer network services to an authorized user of the computer, computer system, or computer network services is guilty of a misdemeanor.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network.

*"§ 14-457. Extortion.*

Any person who verbally or by a written or printed communication, maliciously threatens to commit an act described in G.S. 14-455 with the intent to extort money or any pecuniary advantage, or with the intent to compel any person to do or refrain from doing any act against his will, is guilty of a Class H felony."

**Sec. 2.** This act becomes effective December 1, 1994, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 917

## CHAPTER 765

### AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO CHARGE A TOLL ON CERTAIN BRIDGES IN THE INTRASTATE SYSTEM.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 6 of Chapter 136 of the General Statutes is amended by adding a new section to read:

*"§ 136-82.2. State toll bridges.*

(a) Toll. -- The Department of Transportation may charge a toll for the use of a bridge that is included in the Highway Trust Fund Intrastate System Projects, which are listed in G.S. 136-179, and is at least three and one-half miles in length. The toll may not exceed ten dollars (\$10.00) for a round trip or five hundred dollars (\$500.00) for an annual pass for a vehicle. The Department may set different rates of fees for passenger motor vehicles and for property-carrying vehicles. The Department may employ personnel to collect the toll and may construct and operate a toll plaza for collection of the toll. Toll revenue that exceeds the cost of collecting the toll shall be credited to the Highway Trust Fund.

(b) Report. -- The Department of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on a toll imposed under this section. The report shall state the amount of toll revenue collected, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 1384

## CHAPTER 766

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES TO CHANGE THE SELECTION PROCESS FOR LOCAL DEMONSTRATION PROJECTS, TO ALLOW THE DEPARTMENT OF HUMAN RESOURCES TO DELEGATE CONTRACTING AUTHORITY TO LOCAL PARTNERSHIPS, THE NORTH CAROLINA PARTNERSHIP FOR CHILDREN, INC., OR A PUBLIC OR GOVERNMENTAL ENTITY, TO REQUIRE LOCAL PARTNERSHIPS TO BE NEWLY FORMED ORGANIZATIONS, TO CLARIFY THE USE OF STATE FUNDS BY LOCAL PARTNERSHIPS, TO PROVIDE THAT STATE FUNDS SHALL NOT SUPPLANT CURRENT EXPENDITURES BY COUNTIES ON BEHALF OF YOUNG CHILDREN AND THEIR FAMILIES, AND TO MAKE TECHNICAL CHANGES TO THE LAW GOVERNING THE EARLY CHILDHOOD INITIATIVES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Part 10B of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"Part 10B. Early Childhood Initiatives.

"§ 143B-168.10. *Early childhood initiatives; findings.*

The General Assembly finds, upon consultation with the Governor, that every child can benefit from, and should have access to, high-quality early childhood education and development services. The economic future and well-being of the State depend upon it. To ensure that all children have access to quality early childhood education and development services, the General Assembly further finds that:

- (1) Parents have the primary duty to raise, educate, and transmit values to young preschool children;
- (2) The State can assist parents in their role as the primary caregivers and educators of young preschool children; and
- (3) There is a need to explore innovative approaches and strategies for aiding parents and families in the education and development of young preschool children.

"§ 143B-168.11. *Early childhood initiatives; intent; North Carolina Partnership for Children, Inc. purpose; definitions.*

(a) It is the intent of The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, to

may support through financial and other means, the North Carolina Partnership for Children, Inc., a nonprofit corporation which has as its mission Inc. and comparable local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their plans.

(b) The following definitions apply in this Part:

- (1) Board of Directors. -- The Board of Directors of the North Carolina Partnership for Children, Inc.
- (2) Department. -- The Department of Human Resources.
- (3) Local Partnership. -- A local, private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project under this Part.
- (4) North Carolina Partnership. -- The North Carolina Partnership for Children, Inc.
- (5) Secretary. -- The Secretary of Human Resources.

~~"§ 143B-168.12. Early childhood initiatives; North Carolina Partnership for Children, Inc.; conditions; powers and duties; local demonstration projects; statewide needs and resource assessment; rule making; reporting requirements.~~

~~(a) As a condition for receiving funds appropriated to the North Carolina Partnership for Children, Inc., members of the Board of Directors of the North Carolina Partnership for Children, Inc., shall consist of four ex officio members and 29 appointed members. The four ex officio members shall be the Secretary of the Department of Human Resources, the Secretary of the Department of Environment, Health, and Natural Resources, the Superintendent of Public Instruction, and the President of the Department of Community Colleges. The appointed members shall be appointed as follows: six by the Speaker of the House of Representatives, six by the President Pro Tempore of the Senate, and 17 by the Governor. Each of the members appointed by the President Pro Tempore of the Senate shall reside in a separate one of the following congressional districts: 1st, 3rd, 5th, 7th, 9th, and 11th. Each of the members appointed by the Speaker of the House of Representatives shall reside in a separate one of the following congressional districts: 2nd, 4th, 6th, 8th, 10th, and 12th. Four of the members appointed by the Governor shall be members of the party other than the Governor's party.~~

~~As a further condition for receiving funding, the North Carolina Partnership for Children, Inc., shall agree that it shall adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department. The corporation shall be subject to audit and review by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the corporation.~~



~~(b) As a condition for receiving funding appropriated to it, the North Carolina Partnership for Children, Inc., shall oversee the development and implementation of 12 local demonstration projects. Each demonstration project shall be coordinated by a new local, private, nonprofit 501(c)(3) organization responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local nonprofit organization shall consist of members including representatives of public and private nonprofit health and human service agencies, day care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., may specify in its requests for applications the local agencies that shall be represented on the Board.~~

~~As a further condition for receiving funding, these local nonprofit organizations shall agree that they shall adopt procedures for their operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department. The organizations shall be subject to audit and review by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the organizations.~~

~~The Department of Human Resources shall develop a statewide process, in cooperation with the North Carolina Partnership for Children, Inc., to select the local demonstration projects. The 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district.~~

~~An existing local, private, nonprofit 501(c)(3) organization in the community may apply to serve as the coordinator of a demonstration project if the governance of the project meets the objective of decision making by a broad range of public and private health and human services providers.~~

~~(c) Funds appropriated to be allocated to the local demonstration projects for services to children and families shall be used to expand coverage and improve the quality of services. These funds shall not be allocated to any local demonstration project until the Secretary of the Department of Human Resources, upon recommendation of the North Carolina Partnership for Children, Inc., has approved this local allocation. All local plans shall be approved by the Secretary.~~

~~(d) Funds appropriated to support the local strategic planning process and activities of the North Carolina Partnership for Children, Inc., the local nonprofit organizations, and start-up and related activities shall be available for these purposes upon the effective date of enactment of this Part.~~

~~(e) Communities shall be given the maximum flexibility and discretion practicable in developing their plans. Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. These activities and services may include:~~

- ~~(1) Child day care services, including:~~

- a. ~~Start-up funding for day care providers;~~
- b. ~~Assistance to enable child day care providers to conform to licensing and building code requirements;~~
- c. ~~Needs and resources assessments for child day care services;~~
- d. ~~Child day care resources and referral services;~~
- e. ~~Enhancement of the quality of child day care provided;~~
- f. ~~Technical assistance for child day care providers; and~~
- g. ~~Evaluation of plan implementation of child day care services;~~
- (2) ~~Family and child-centered services, including early childhood education and child development services, including:~~
  - a. ~~Enhancement of the quality of family and child-centered services provided;~~
  - b. ~~Technical assistance for family and child-centered services;~~
  - c. ~~Needs and resource assessments for family and child-centered services;~~
  - d. ~~Home-centered services; and~~
  - e. ~~Evaluation of plan implementation of family and child-centered services; and~~
- (3) ~~Other appropriate activities and services for child day care providers and for family and child-centered services, including:~~
  - a. ~~Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and~~
  - b. ~~Procedures to ensure that infants and young children receive needed health, immunization, and related services.~~

~~(f) The Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., shall develop a needs and resource assessment for each county. Of the funds appropriated to it to implement this Part, the Department may make available funds to each county for one year to an appropriate private nonprofit entity or to the county to perform this assessment.~~

~~(g) The Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., shall adopt any rules necessary to implement this section, including rules to ensure that no State funds or local funds used to supplant these State funds shall be used for personnel sick leave and annual leave benefits not allowed to State employees.~~

~~(h) The Department of Human Resources shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor by April 1, 1994, and by March 1, 1995, on the ongoing results of all the local demonstration projects' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership for Children, Inc., and of the Department of Human Resources, together with legislative proposals, including proposals to implement the program statewide.~~

"§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

- (1) Members of the Board of Directors shall consist of the following 33 members:
  - a. The Secretary of Human Resources, ex officio;

- b. The Secretary of Environment, Health, and Natural Resources, ex officio;
  - c. The Superintendent of Public Instruction, ex officio;
  - d. The President of the Department of Community Colleges, ex officio;
  - e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;
  - f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives; and
  - g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor.
- (2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.
- (3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.

"§ 143B-168.13. Implementation of program; duties of Department and Secretary.

(a) The Department shall:

- (1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local demonstration projects shall represent the various geographic areas of the State.
- (2) Develop, in cooperation with the North Carolina Partnership, a needs and resource assessment for each county. Of the funds appropriated to it to implement this Part, the Department may make available funds to each county for one year to an appropriate private nonprofit entity or to the county to perform this assessment.
- (3) Provide technical and administrative assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.

- (4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that no State funds or local funds used to supplant these State funds shall be used for personnel sick leave and annual leave benefits not allowed to State employees. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.
- (5) Report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor by April 1, 1994, and by March 1, 1995, on the ongoing results of all the local demonstration projects' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.

(b) The Secretary shall approve, upon recommendation of the North Carolina Partnership, all allocations of State funds to local demonstration projects. The Secretary also shall approve all local plans.

"§ 143B-168.14. Local partnerships; conditions.

(a) In order to receive State funds, the following conditions shall be met:

- (1) Each local demonstration project shall be coordinated by a new local partnership responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local partnership shall consist of members including representatives of public and private nonprofit health and human service agencies, day care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part.
- (2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.
- (3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.



(b) Each local partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the local partnerships.

"§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or Statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

(1) Child day care services, including:

- a. Child day care subsidies to reduce waiting lists;
- b. Raising the county child day care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child day care services;
- c. Raising the income eligibility for child day care subsidies to seventy-five percent (75%) of the State median family income;
- d. Start-up funding for child day care providers;
- e. Assistance to enable child day care providers to conform to licensing and building code requirements;
- f. Child day care resources and referral services;
- g. Enhancement of the quality of child day care provided;
- h. Technical assistance for child day care providers;
- i. Quality grants for child day care centers or family child day care homes;
- j. Expanded services or enhanced rates for children with special needs;
- k. Head Start services;
- l. Development of comprehensive child day care services that include child health and family support;
- m. Activities to reduce staff turnover;
- n. Activities to serve children with special needs;
- o. Transportation services related to providing child day care services;
- p. Evaluation of plan implementation of child day care services; and
- q. Needs and resources assessments for child day care services.



- (2) Family- and child-centered services, including early childhood education and child development services, including:
  - a. Enhancement of the quality of family- and child-centered services provided;
  - b. Technical assistance for family- and child-centered services;
  - c. Needs and resource assessments for family- and child-centered services;
  - d. Home-centered services; and
  - e. Evaluation of plan implementation of family- and child-centered services.
- (3) Other appropriate activities and services for child day care providers and for family- and child-centered services, including:
  - a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and
  - b. Procedures to ensure that infants and young children receive needed health, immunization, and related services.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated by the Secretary for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated by the Secretary to support activities and services for children, families, and providers shall not be used for major capital expenses unless the Secretary approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that county.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

"§ 143B-168.16. Home-centered services; consent.

No home-centered services including home visits or in-home parenting training shall be allowed under this Part unless the written, informed consent of the participating parents authorizing the home-centered services is first obtained by the local partnership, educational institution, local school administrative unit, private school, not-for-profit organization, governmental agency, or other entity that is conducting the parenting program. The participating parents may revoke at any time their consent for the home-centered services.

The consent form shall contain a clear description of the program including (i) the activities and information to be provided by the program during the home visits, (ii) the number of expected home visits, (iii) any responsibilities of the parents, (iv) the fact, if applicable, that a record will be made and maintained on the home visits, (v) the fact that the parents may revoke at any time the consent, and (vi) any other information as may be necessary to convey to the parents a clear understanding of the program.

Parents at all times shall have access to any record maintained on home-centered services provided to their family and may place in that record a written response to any information with which they disagree that is in the record."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 1630

## CHAPTER 767

AN ACT TO MAKE TECHNICAL CORRECTIONS AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO VARIOUS CRIMINAL STATUTES, TO REPEAL VARIOUS CRIMINAL LAWS THAT ARE OBSOLETE OR REDUNDANT, AND TO EXTEND THE SUNSET FOR THE METHOD OF SELECTING MEMBERS OF THE NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION APPOINTED BY THE NORTH CAROLINA SHERIFFS' ASSOCIATION.

*The General Assembly of North Carolina enacts:*

### PART 1. EARNED TIME FOR MISDEMEANOR OFFENDERS

**Section 1.** G.S. 15A-1340.20(d) reads as rewritten:

"(d) Earned Time Authorization. -- An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanor offenders awarded by the Department of Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with ~~law~~, law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanor offenders more than four days of earned time credit per month of incarceration."

**Sec. 2.** G.S. 162-60 reads as rewritten:

"§ 162-60. *Reduction in sentence allowed for work.*

~~In addition to any earned time credit a prisoner may be awarded under G.S. 15A-1340.20, a~~ A prisoner who has faithfully performed the duties assigned to him pursuant to G.S. 162-58 is entitled to a reduction in his sentence of four days for each 30 days of work performed. The person having custody of the prisoner, as defined in G.S. 162-59, shall be the sole judge as to whether the prisoner has faithfully performed his duties. A prisoner who escapes or attempts to escape while performing work pursuant to G.S. 162-58 shall forfeit any reduction in sentence that he would have been entitled to under this section."

Sec. 3. G.S. 153A-230.3(b) reads as rewritten:

"(b) Operation of Satellite Jail/Work Release Unit. -- A county or group of counties operating a satellite jail/work release unit shall comply with the following requirements concerning operation of the unit:

- (1) The county shall make every effort to ensure that at least eighty percent (80%) of the unit occupants shall be employed and on work release, and that the remainder shall earn their keep by working at the unit on maintenance and other jobs related to the upkeep and operation of the unit or by assignment to community service work, and that alcohol and drug rehabilitation be available through community resources.
- (2) The county shall require the occupants to give their earnings, less standard payroll deductions required by law and premiums for group health insurance coverage, to the Sheriff. The county may charge a per day charge from those occupants who are employed or otherwise able to pay from other resources available to the occupants. The per day charge shall be calculated based on the following formula: The charge shall be either the amount that the Department of Correction deducts from a prisoner's work-release earnings to pay for the cost of the prisoner's keep or fifty percent (50%) of the occupant's net weekly income, whichever is greater, but in no event may the per day charge exceed an amount that is twice the amount that the Department of Correction pays each local confinement facility for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical expenses. The per day charge may be adjusted on an individual basis where restitution and/or child support has been ordered, or where the occupant's salary or resources are insufficient to pay the charge.

The county also shall accumulate a reasonable sum from the earnings of the occupant to be returned to him when he is released from the unit. The county also shall follow the guidelines established for the Department of Correction in G.S. 148-33.1(f) for determining the amount and order of disbursements from the occupant's earnings.

- (3) Any and all proceeds from daily fees shall belong to the county's General Fund to aid in offsetting the operation and maintenance of the satellite unit.
- (4) The unit shall be operated on a full-time basis, i.e., seven days/nights a week, but weekend leave may be granted by the Sheriff. In granting weekend leave, the Sheriff shall follow the policies and procedures of the Department of Correction for granting weekend leave for Level 3 minimum custody inmates.
- (5) ~~Good time and gain~~ Earned time shall be applied to these county prisoners in the same manner as prescribed in G.S. ~~15A-1340.7~~ 15A-1340.20 and G.S. 148-13 for State prisoners.
- (6) The Sheriff shall maintain complete and accurate records on each inmate. These records shall contain the same information as

required for State prisoners that are housed in county local confinement facilities."

**Sec. 4.** G.S. 15A-1368.2(a) reads as rewritten:

"(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less nine months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. ~~15A-1340(d)~~ 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months."

**Sec. 5.** G.S. 15A-1368.3(c) reads as rewritten:

"(c) Effect of Violation. -- If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements: --

- (1) The supervisee will be returned to prison up to the time remaining on his maximum imposed term.
- (2) The supervisee shall not receive any credit for days on post-release supervision against the maximum term of imprisonment imposed by the court under G.S. 15A-1340.13.
- (3) Pursuant to Article 19A of Chapter 15, the Department of Correction shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1368.6.
- (4) The prisoner is eligible to receive earned time credit against the maximum prison term as provided in G.S. ~~15A-1340(d)~~ 15A-1340.13(d) for time served in prison after the revocation."

## PART 2. LENGTHS OF PROBATION PERIODS

**Sec. 6.** G.S. 15A-1342(a) reads as rewritten:

"(a) Period. -- The court may place a convicted offender on probation for the appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five years. The court may place a defendant as to whom prosecution has been deferred on probation for a maximum of two years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

Extension. -- The court with the consent of the defendant may extend the period of probation beyond ~~five years~~ the original period (i) for the purpose of allowing the defendant to complete a program of restitution, or (ii) to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. The period of extension shall not exceed three years beyond the original period of probation. The special extension authorized herein may be ordered only in the last six months of the

~~probation term, original period of probation.~~ Any probationary judgment form provided to a defendant on supervised probation shall state that probation may be extended pursuant to this subsection."

Sec. 7. G.S. 15A-1351(a) reads as rewritten:

"(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum sentence of imprisonment imposed for the offense, whichever is less, and no confinement other than an activated suspended sentence may be required beyond two years of conviction. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences."

Sec. 8. G.S. 15A-1343.2(d) reads as rewritten:

"(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the ~~term~~ original period of probation for offenders sentenced under Article 81B shall be as follows:



- (1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
- (2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
- (3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
- (4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original ~~term~~ period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original probation term. period of probation."

### PART 3. EXTEND LENGTH OF CONFINEMENT ON SPECIAL PROBATION FOR SENTENCES TO IMPACT

**Sec. 9.** G.S. 15A-1344(e) reads as rewritten:

"(e) Special Probation in Response to Violation. -- When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under G.S. ~~20-138.1~~, 20-138.1 and probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum sentence of imprisonment imposed for the offense, whichever is less. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall

not exceed one-fourth the maximum penalty allowed by law. For probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed six months or one-half the maximum term of the suspended sentence of imprisonment, whichever is less. No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first."

Sec. 10. G.S. 15A-1351(a), as amended by Section 7 of this act, reads as rewritten:

"(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences of impaired driving under G.S. 20-138.1, 20-138.1 and probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum sentence of imprisonment imposed for the offense, whichever is less, and no confinement other than an activated suspended sentence may be required beyond two years of conviction. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. For probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment

(IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed six months or one-half of the maximum term of the suspended sentence, whichever is less. In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences."

#### PART 4. COUNTING MULTIPLE PRIOR CONVICTIONS

**Sec. 11.** G.S. 15A-1340.14(d) reads as rewritten:

"(d) Multiple Prior Convictions Obtained in One Court Week. -- For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used."

#### PART 5. CLASSIFYING PRIOR MISDEMEANOR CONVICTIONS FROM OTHER JURISDICTIONS

**Sec. 12.** G.S. 15A-1340.14(e) reads as rewritten:

"(e) Classification of Prior Convictions From Other Jurisdictions. -- Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as ~~a~~ that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified higher than a Class I felony, as a Class I felony or higher, the conviction is treated as ~~the higher that~~ that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class 1 misdemeanor in North Carolina, the conviction is treated as a Class 1 misdemeanor for assigning prior record level points."

## PART 6. CONTINUANCE OF SENTENCING HEARING

**Sec. 13.** G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is *prima facie* evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, 'a copy' includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, ~~either the State or the offender is entitled to the court~~ may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate."

**Sec. 13.1.** G.S. 15A-1340.21(c) reads as rewritten:

"(c) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is *prima facie* evidence that the offender

named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, 'copy' includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, ~~either the State or the offender is entitled to~~ the court may grant a continuance of the sentencing hearing."

## PART 7. REVISE COMMUNITY PENALTIES ELIGIBILITY CRITERIA

**Sec. 14.** G.S. 7A-771 reads as rewritten:

*"§ 7A-771. Definitions.*

As used in this Article:

- (1) 'Community penalties program' means an agency within the judicial district which shall (i) prepare community penalty plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) monitor the progress of offenders placed on community penalty plans.
- (2) 'Community penalty plan' means a plan presented in writing to the sentencing judge which provides a detailed description of the targeted offender's proposed community penalty.
- (2a) 'Director' means the Director of the Administrative Office of the Courts.
- (3) 'Judicial district' means a district court district as defined in G.S. 7A-133.
- (4) Repealed by Session Laws 1991, c. 566, s. 4, effective July 1, 1991.
- (5) 'Targeted offenders' means persons convicted of ~~misdemeanors, Class H felonies other than involuntary manslaughter, or Class I or J felonies, who would be eligible for intensive probation or house arrest,~~ misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

**Sec. 15.** G.S. 7A-773 reads as rewritten:

*"§ 7A-773. Responsibilities of a community penalties program.*

A community penalties program shall be responsible for:

- (1) Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.
- (2) Preparing detailed community penalty plans for presentation to the sentencing judge by the offender's attorney.
- (3) Contracting or arranging with public or private agencies for services described in the community penalty plan.
- (4) Monitoring the progress of offenders under community penalty plans."



## PART 8. REVISE HABITUAL FELON LAW

Sec. 16. G.S. 14-7.6 reads as rewritten:

"§ 14-7.6. *Sentencing of habitual felons.*

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article ~~(except where the death penalty or a sentence of life imprisonment is imposed)~~ the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced as a Class C felon. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

## PART 9. PUNISH FAILURE TO COMPLY WITH CONTROL CONDITIONS BY PERSONS WITH COMMUNICABLE DISEASES

Sec. 17. G.S. 15A-1340.10 reads as rewritten:

"§ 15A-1340.10. *Applicability of structured sentencing.*

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 and failure to comply with control measures under G.S. 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."

Sec. 18. G.S. 130A-25 reads as rewritten:

"§ 130A-25. *Misdemeanor.*

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a ~~Class 1~~ misdemeanor.

(b) A person convicted under this section ~~for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall~~ serve any prison sentence in McCain Hospital, Division of Prisons, Department of Correction, McCain, North Carolina; the North Carolina Correctional Center for Women, Division of Prisons, Department of Correction, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Correction after consultation with the State Health Director. The Secretary of Correction shall consult with the State Health Director concerning the medical management of these persons.

(c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned ~~for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person~~

would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court."

## PART 10. CLASSIFY CERTAIN OFFENSES

### Sec. 19. G.S. 7A-456 reads as rewritten:

"§ 7A-456. *False statements; penalty.*

(a) A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes ~~perjury, and upon conviction thereof, the defendant may be punished as provided in G.S. 14-209, a Class I felony.~~

(b) A judicial official making the determination of indigency shall notify the person of the provisions of subsection (a) of this section and shall explain to him the meaning of and the consequences of committing the ~~crime of perjury, section.~~

(c) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 11.1."

### Sec. 20. G.S. 14-253 reads as rewritten:

"§ 14-253. *Failure of certain railroad officers to account with successors.*

If the president and directors of any railroad company, and any person acting under them, shall, upon demand, fail or refuse to account with the president and directors elected or appointed to succeed them, and to transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company, they shall be guilty of a Class I felony. ~~All persons conspiring with any such president, directors or their agents to defeat, delay or hinder the execution of this section shall be guilty of a Class 1 misdemeanor.~~ The Governor is hereby authorized, at the request of the president, directors and other officers of any railroad company, to make requisition upon the governor of any other state for the apprehension of any such president failing to comply with this section."

### Sec. 21. G.S. 14-277.4(b) reads as rewritten:

"(b) No person shall injure ~~or attempt~~ or threaten to injure a person who is or has been:

- (1) Obtaining health care services;
- (2) Lawfully aiding another to obtain health care services; or
- (3) Providing health care services."

### Sec. 22. G.S. 54C-64 reads as rewritten:

"§ 54C-64. *Prohibited practices.*

A person who engages in any of the following acts or practices is guilty of a Class 1 ~~misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court;~~ misdemeanor:

- (1) Defamation: Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral, written, or printed statement that is false regarding the financial condition of any savings bank.

- (2) False information and advertising: Making, publishing, disseminating, circulating, or otherwise placing before the public in any publication, media, notice, pamphlet, letter, poster, or any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the savings bank business or with respect to any person in the conduct of the savings bank business that is untrue, deceptive, or misleading.
- (3) Misleading advertising: Use of a name or designation by a savings bank in advertisements, announcements, or statements concerning the savings bank that does not include the words 'savings bank' and the designation 'SSB' in type that is equally prominent with the other terms in the name or designation of the savings bank."

Sec. 23. G.S. 58-2-180 reads as rewritten:

"§ 58-2-180. *Punishment for making false statement.*

If any person in any financial or other statement required by this Chapter willfully misstates information, that person making oath to or subscribing the statement is guilty of ~~perjury under G.S. 14-209~~; a Class I felony; and the entity on whose behalf the person made the oath or subscribed the statement is subject to a fine imposed by the court of not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000)."

Sec. 24. G.S. 58-8-1 reads as rewritten:

"§ 58-8-1. *Mutual insurance companies organized; requisites for doing business.*

No policy may be issued by a mutual company until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the Commissioner for approval is genuine, and made with an agreement with every subscriber for insurance that he will take the policies subscribed for by him within 30 days after the granting of a license to the company by the Commissioner to issue policies. Any person making a false oath in respect to the certificate is guilty of ~~perjury under G.S. 14-209~~, a Class I felony."

Sec. 25. G.S. 58-24-180(d) reads as rewritten:

"(d) Any person violating the provisions of G.S. 58-24-65 shall be guilty of a felony, and ~~upon conviction shall be liable to a fine of not more than fifteen thousand dollars (\$15,000), or to imprisonment for not more than five years, or to both fine and imprisonment.~~ Class I felony."

Sec. 26. G.S. 74E-13(a) reads as rewritten:

"(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a company police agency or engage in the recruitment or hiring of company police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation, or their agents and employees violating any of the provisions of this Chapter shall be guilty of a ~~misdemeanor and punishable by a fine, imprisonment for a term not to exceed two years, or both, in the discretion of the court.~~ Class I misdemeanor."

Sec. 27. G.S. 77-57(b) reads as rewritten:

"(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a ~~misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00) or imprisonment for not more than 30 days.~~ Class 3 misdemeanor."

Sec. 28. G.S. 90-210.70(b) reads as rewritten:

"(b) Any person who willfully violates any other provision of this Article shall be guilty of a ~~misdemeanor and shall be fined not less than five hundred dollars (\$500.00), or shall be imprisoned for not less than 30 days nor more than two years, or both.~~ Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually."

## PART 11. REPEAL CERTAIN OFFENSES

Sec. 29. The following statutes which contain felony offenses are repealed:

- (1) G.S. 14-20. Killing adversary in duel; aiders and abettors declared accessories.
- (2) G.S. 14-43. Abduction of married women.

Sec. 30. The following statutes which contain misdemeanor offenses are repealed:

- (1) G.S. 14-116. Fraudulent entry of horses at fairs.
- (2) G.S. 14-133. Erecting artificial islands and lumps in public waters.
- (3) G.S. 14-140. Certain fires to be guarded by watchman.
- (4) G.S. 14-170. "Rental battery" defined; identification of rental storage batteries.
- (5) G.S. 14-171. Defacing word "rental" prohibited.
- (6) G.S. 14-172. Sale, etc., of rental battery prohibited.
- (7) G.S. 14-173. Repairing another's rental battery prohibited.
- (8) G.S. 14-174. Time limit on possession of rental battery without written consent.
- (9) G.S. 14-175. Violation made misdemeanor.
- (10) G.S. 14-176. Rebuilding storage batteries out of old parts and sale of, regulated.
- (11) G.S. 14-195. Using profane or indecent language on passenger trains.
- (12) G.S. 14-222. Refusal of witness to appear or to testify in investigations of lynchings.
- (13) G.S. 14-310. Dance marathons and walkathons prohibited.
- (14) G.S. 14-311. Penalty for violation.
- (15) G.S. 14-312. Each day made separate offense.
- (16) G.S. 14-356. Conspiring to blacklist employees.
- (17) G.S. 14-389. Sale of Jamaica ginger.
- (18) G.S. 14-396. Dogs on "Capitol Square" worrying squirrels.
- (19) G.S. 14-397. Use of name of denominational college in connection with dance hall.

Sec. 31. G.S. 14-32.1 reads as rewritten:

"§ 14-32.1. *Assaults on handicapped persons; punishments.*

(a) For purposes of this section, a 'handicapped person' is a person who has:

(1) A physical or mental disability, such as decreased use of arms or legs, blindness, deafness, mental retardation or mental illness; or

(2) Infirmity

which would substantially impair that person's ability to defend himself.

~~(b) Any person who assaults a handicapped person with a deadly weapon with intent to kill and inflicts serious injury is guilty of a Class C felony.~~

~~(c) Any person who assaults a handicapped person with a deadly weapon and inflicts serious injury is guilty of a Class E felony.~~

~~(d) Any person who assaults a handicapped person with a deadly weapon with intent to kill is guilty of a Class E felony.~~

(e) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any aggravated assault or assault and battery on a handicapped person is guilty of a Class F felony. A person commits an aggravated assault or assault and battery upon a handicapped person if, in the course of the assault or assault and battery, that person:

(1) Uses a deadly weapon or other means of force likely to inflict serious injury or serious damage to a handicapped person; or

(2) Inflicts serious injury or serious damage to a handicapped person; or

(3) Intends to kill a handicapped person.

(f) Any person who commits a simple assault or battery upon a handicapped person is guilty of a Class 1 misdemeanor."

## PART 12. SENTENCING FOR HABITUAL IMPAIRED DRIVING

Sec. 32. G.S. 20-138.5(b), as amended by Section 32 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a Class ~~I~~ G felon. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

## PART 13. N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

Sec. 33. Section 3 of Chapter 1005 of the 1991 Session Laws reads as rewritten:

"Sec. 3. This act is effective upon ratification and expires September 1, ~~1994~~, 1995."

## PART 13A. CORRECTION OF EFFECTIVE DATE/TRESPASS AMENDMENTS

Sec. 33.1. (a) Section 2 of Chapter 659, Session Laws of 1993 reads as rewritten:



"Sec. 2. This act becomes effective December 1, ~~1993~~, 1994, and applies to offenses committed on or after that date."

(b) Section 2 of Chapter 862, Session Laws of 1991, as amended by Chapters 593 and 659 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act applies only to ~~Iredell and Rowan Counties~~, Iredell, Rowan, Stokes, Wilkes, and Yadkin Counties."

#### PART 14. EFFECTIVE DATE

Sec. 34. Sections 13, 33, and 33.1 of this act are effective upon ratification. The remaining sections of this act become effective October 1, 1994. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 1642

#### CHAPTER 768

AN ACT TO AUTHORIZE THE CITY OF DURHAM TO COLLECT DELINQUENT WATER AND SEWER FEES RESULTING FROM LEAKING PIPES OR FIXTURES IN THE SAME MANNER AS PROPERTY TAXES AND TO AUTHORIZE THE CITY OF DURHAM TO ENGAGE IN PROGRAMS OF ASSISTANCE AND FINANCING FOR REHABILITATION OR REPAIR OF BUILDINGS AND OTHER IMPROVEMENTS IN RETAIL, COMMERCIAL, OR INDUSTRIAL USE AND LOCATED IN THE DOWNTOWN AND ADJACENT OR NEARBY INNER CITY AREAS.

*The General Assembly of North Carolina enacts:*

Section 1. The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, as amended, is further amended by adding a new Section 34 as follows:

"Sec. 34. *Water and Sewer Fees and Charges.*--Under the circumstances specified in this section, the portion of any unpaid rates, fees, or charges imposed by the City for the use of or the services furnished by either of the public enterprises defined in G.S. 160A-311(2) or (3) which the City determines to be the result of broken or leaking plumbing fixtures, pipes, or facilities owned by the real property owner and located on the real property using or served by the public enterprise shall become a lien on the real property, and may be collected in any manner following notice and opportunity for appeal as provided herein, in a foreclosure action using the same procedure by which delinquent personal or real property taxes may be collected. Any such lien shall be inferior to all prior and subsequent liens for federal, State, and local taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

(a) This section only applies where the public enterprise customer is not an owner of the real property using or served by the public enterprise.

(b) No lien shall arise unless the City, following discovery by the City of the break or leak, sends written notice to the owner of the property, either by personal service or by registered or certified mail return receipt requested, with a copy by regular mail to the public enterprise customer. Such notice shall inform the owner of the break or leak, and that a lien against the real property will arise unless the owner repairs the break or leak and provides written evidence thereof to the City within 30 days from the date of receipt of the notice. Only the portion of the unpaid rates, fees, or charges that accrues or is imposed after the expiration of this 30-day period shall become a lien on the real property as provided in this section. The lien shall include only that portion of the rates, fees, or charges that is attributable to the use of or services furnished by the public enterprise both after the expiration of this 30-day period and as the result of the break or leak.

(c) If the owner believes the City's determination that there is a break or leak to be in error, the owner may appeal to the City Manager or designee within 15 days from the date of receipt of the notice. Following a decision by the City Manager or designee, the owner may appeal such decision to the City Council under guidelines and procedures to be developed by the City. The City Manager or designee shall provide the owner with a copy of such guidelines and procedures along with or prior to the decision by the City Manager or designee. The decision of the City Council may be delivered to the owner either by personal service or by registered or certified mail return receipt requested. The decision by the City Council shall be subject to review by the superior court by proceedings in the nature of *certiorari*. Any petition for review by the superior court shall be filed with the clerk of superior court within 15 days after the decision of the City Council. During the period of such appeal and review, the 30-day period referred to in Section 34(b) for repair of the break or leak shall be stayed.

(d) For purposes of this section, 'owner' means the person or persons shown on the County tax listing as the owner of the property."

**Sec. 2.** The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, as amended, is amended by adding a new section to read:

*"Sec. 108.3. Financing programs in Inner City.*

(a) Definitions. -- The following definitions apply in this section:

(1) Inner City. -- The central business district, surrounding downtown area of the City, and adjacent or nearby Inner City areas, all as may be defined and amended from time to time by the City Council of the City.

(2) Commercial Use. -- Retail, commercial, industrial, or other nonresidential use. For buildings and improvements in mixed use, any portion of the buildings or improvements not being used for residential purposes is considered to be in commercial use.

(b) Authorization. -- Subject to the limitations provided in this subsection, the City may engage in programs of assistance and financing, including the making of loans, for acquisition, rehabilitation, repair, construction, reconditioning, furnishing, and equipping of real property,

buildings, and improvements in commercial use in all or any part of the Inner City and for design, administrative, legal, and other costs and expenses related or incidental to the foregoing. Each program shall include either the making of loans or grants jointly with other public or private parties or the participation in or purchase of loans under terms and conditions prescribed by the City. The City shall not be obligated for more than fifty percent (50%) of the total amount of assistance or financing provided under each program. For each loan program, the City shall engage a public or private lender to perform origination and servicing of the loans under terms and conditions prescribed by the City.

(c) Findings and Declaration of Policy. -- It is hereby determined and declared as a matter of legislative finding and policy that the authority hereby conferred will assist in avoiding the growth of conditions of deterioration and blight in the Inner City, have a significant effect on the revitalization and rejuvenation of the Inner City, promote economic development of the Inner City, create employment opportunities, increase the taxable value of property in the Inner City, and enhance the general welfare and public use and enjoyment of the Inner City, which are hereby determined and declared to be public purposes for which public money may be spent."

**Sec. 3.** The authority granted by this act is in addition to, and not in derogation of, any other authority granted to the City by this Charter or any other law.

**Sec. 4.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 1505

## CHAPTER 769

AN ACT TO MODIFY THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 1993, TO MAKE APPROPRIATIONS FOR CAPITAL IMPROVEMENTS FOR THE 1994-95 FISCAL YEAR, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

*The General Assembly of North Carolina enacts:*

### INTRODUCTION

**Section 1.** The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

### TITLE OF ACT

**Sec. 2.** This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 1994."

## TITLE I. CURRENT OPERATIONS

## PART 1. GENERAL FUND APPROPRIATIONS

## CURRENT OPERATIONS/STATE GOVERNMENT

**Sec. 3.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal year ending June 30, 1995, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the General Fund for these purposes for the 1994-95 fiscal year. Amounts set out in brackets are reductions from General Fund appropriations for the 1994-95 fiscal year.

GENERAL FUND  
OPERATING

	RECURRING	NONRECURRING
Judicial	\$ 4,491,387	\$ 5,387,990
General Assembly	3,131,250	4,010,000
Office of the Governor		
01. Office of the Governor	194,978	-
02. Office of State Budget and Management	37,089	-
03. Office of State Planning	184,536	-
04. Special Appropriations	-	7,397,500
05. Housing Finance Authority	-	5,150,000
Department of Secretary of State	166,612	-
Department of State Auditor	701,766	380,730
Department of State Treasurer	2,763,090	-
Public Education		
01. Department of Public Instruction	3,881,787	900,000
02. State Aid to Local School Administrative Units	(12,871,620)	75,542,343
Total Public Education	(8,989,833)	76,442,343
Department of Justice	364,767	789,565
Department of Administration	387,778	62,545
Department of Agriculture	1,850,766	650,000
Department of Labor	771,138	761,050

Department of Insurance	1,146,791	
Department of Environment, Health, and Natural Resources	3,221,872	6,006,456
University of North Carolina - Board of Governors		
01. University of North Carolina		
a. General Administration	(178,349)	
b. Lump sum - Institutional Programs	9,420,515	12,546,519
c. Related Educational Programs	4,540,000	
02. University of North Carolina at Chapel Hill		
a. Academic Affairs	(1,482,962)	238,358
b. Health Affairs	(930,256)	
c. Area Health Education Centers	(70,506)	
03. North Carolina State University at Raleigh		
a. Academic	(1,508,632)	
b. Agricultural Research Service	888,760	920,000
c. Agricultural Extension Services	(156,289)	25,000
University of North Carolina at Greensboro	(432,636)	
University of North Carolina at Charlotte	(408,778)	
University of North Carolina at Asheville	112,189	
University of North Carolina at Wilmington	(245,570)	
East Carolina University		
a. Academic	(612,126)	
b. Health Affairs	(466,736)	
North Carolina Agricultural and Technical State University	(402,382)	
Western Carolina University	(302,243)	
Appalachian State University	(350,783)	
Pembroke State University	(80,399)	
Winston-Salem State University	(134,673)	
Elizabeth City State University	(139,131)	
Fayetteville State University	(52,197)	
North Carolina Central University	(231,408)	
North Carolina School of the Arts	(77,044)	
North Carolina School of Science and Mathematics	303,993	
University of North Carolina Hospitals at Chapel Hill	(201,782)	
	6,800,575	13,729,877
Department of Human Resources		
01. Secretary's Office	1,453,979	2,000,000
02. Division of Aging	485,182	200,000



03. Services for the Deaf and Hard of Hearing	2,872,540	
04. Social Services	6,830,819	1,415,167
05. Medical Assistance	(70,036,605)	50,000
06. Services for the Blind	228,050	-
07. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	20,240,648	7,200,000
08. Division of Facility Services	637,734	-
09. Division of Vocational Rehabilitation Services	1,272,905	-
10. Division of Youth Services	19,427	100,000
11. Division of Child Development	24,039,898	1,300,000
Total Human Resources	(11,955,423)	12,265,167
Department of Correction	(5,157,545)	(1,660,361)
Department of Commerce		
01. Commerce	6,210,526	20,885,509
02. Microelectronics Center	3,900,000	-
03. Rural Economic Development Center	2,100,000	5,675,000
04. Biotechnology Center	1,000,000	1,000,000
05. Technological Development Authority	-	1,250,000
Department of Revenue	5,020,192	5,180,776
Department of Cultural Resources	287,427	4,067,500
Department of Crime Control and Public Safety	1,597,852	709,662
Office of State Controller	2,348,844	12,000,000
Department of Community Colleges	9,563,666	13,208,500
State Board of Elections	296,141	1,657,500
Office of State Budget and Management		
01. Reserve for Salary Increases		
a. 4% Salary Increase	282,470,330	-
b. Reduction in Balance of 2% Salary Increase	(1,757,024)	-
c. Compensation/Performance Bonus	-	35,421,158
02. Reserve for Salary Adjustment	500,000	-
03. Reserve for Retiree 30% Reduction	(16,318)	-
04. Reserve for Restoring Pay Date	-	120,000,000
05. Reserve for OSHA - Bloodborne Pathogens Standards	-	1,000,000

07. Reserve to Match Federal/ Other Resources	-	3,000,000
08. Reserve for Voter Registration	-	1,000,000
09. Reserve for Subsistence Increase	1,600,000	-
10. Reserve for Tort Claims	400,000	-
11. Reserve for Education Technology Equipment	-	42,000,000
12. Reserve for Criminal History Check - Child Day Care	250,000	-
Debt Service	25,723,695	
Savings Reserve Account	-	66,700,000
Grand Total		
Current Operations/General Fund	\$341,606,925	\$467,928,557
<u>Current Operations/Highway Fund</u>		<u>1994-95</u>
Department of Transportation		
01. Administration		\$ (531,000)
02. Division of Highways		
a. Ferry Operations		2,000,000
b. Construction - Federal Aid Match		(3,867,179)
03. Division of Motor Vehicles		2,096,020
04. Reserve for Salary Increases		14,400,000
05. Debt Service		(33,255)
Revenue		71,968
Environment, Health, and Natural Resources		928,032
Crime Control and Public Safety		<u>1,846,665</u>
GRAND TOTAL CURRENT OPERATIONS/ HIGHWAY FUND		\$ 16,911,251

## PART 2. HIGHWAY FUND APPROPRIATIONS - NONRECURRING

### CURRENT OPERATIONS/HIGHWAY FUND - NONRECURRING APPROPRIATIONS/HIGHWAY FUND

**Sec. 4.** Appropriations are made from the Highway Fund of the 1994-95 fiscal year for use by the Department of Transportation, and for other purposes to provide for one-time expenditures according to the following schedule:

<u>Current Operations/Highway Fund - Nonrecurring</u>		<u>1994-95</u>
Department of Transportation		
01. Administration	\$	332,000
02. Division of Highways		
a. State Construction		
(01) Secondary Construction		4,300,000
b. State Maintenance		
(01) Primary		3,027,294
(02) Secondary		5,305,273
(03) Urban		3,875,220
(04) Resurfacing		1,627,392
c. Ferry Operations		141,000
03. Division of Motor Vehicles		2,007,000
04. State Aid to Municipalities		4,300,000
05. State Aid for Public Transportation		5,800,000
06. State Aid for Railroads		400,000
07. Reserve for Salary Increases (Compensation/ Performance Bonus)		3,600,000
08. Battery Dump Site Cleanup		115,000
Appropriations for Other State Agencies		
01. Crime Control and Public Safety		888,570
02. Global TransPark Authority		<u>2,870,000</u>

GRAND TOTAL CURRENT OPERATIONS/HIGHWAY FUND -  
NONRECURRING \$ 38,588,749

#### PART 4. HIGHWAY TRUST FUND

Sec. 5. In addition to the appropriations made by Section 5 of Chapter 321 of the 1993 Session Laws, appropriations from the Highway Trust Fund are made for the 1994-95 fiscal year as follows:

01. Intrastate System	\$	42,564,140
02. Secondary Roads Construction		4,815,971
03. Urban Loops		17,211,167
04. State Aid - Municipalities		4,465,972
05. Program Administration		2,742,750
06. Transfer to General Fund		<u>-</u>

GRAND TOTAL/HIGHWAY TRUST FUND \$ 71,800,000

#### PART 5. BLOCK GRANT PROVISION

Requested by: Senators Richardson, Walker, Representatives Easterling,  
Nye

DHR BLOCK GRANT PROVISIONS MODIFICATION

Sec. 5.1. Section 2 of Chapter 591 of the 1993 Session Laws is amended by inserting a new subsection to read:

"(b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program except for the Weatherization and the Indian Affairs Programs in the Low Income Energy Block Grant, in each of the federal block grants listed above, shall be reduced equally to total the reduction in federal funds."

## PART 6. GENERAL PROVISIONS

Requested by: Senator Lee, Representatives McAllister, McLaughlin

### HIGHWAY FUND AVAILABILITY INCREASE

Sec. 6. Section 18 of Chapter 321 of the 1993 Session Laws, as amended by Section 7 of Chapter 561 of the 1993 Session Laws, reads as rewritten:

"Sec. 18. The Highway Fund appropriations availability used in developing the 1993-95 Highway Fund budget is shown below:

	(\$Million) 1993-94	(\$Million) 1994-95
Beginning Credit Balance	\$21.03	— \$40.5
Estimated Revenues:	944.6	\$ 961.3 979.3
Transfer from Equipment Fund	10.0	—
Transfer to Highway Trust Fund	—	(9.6)
Total Highway Fund Availability	\$975.63	\$951.7. 1,010.2."

## PART 7. SALARIES AND BENEFITS

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont

### APPROPRIATIONS

Sec. 7. (a) Of the funds appropriated in this act from the General Fund to the Reserves for Salary Increases, the sum of three hundred seventeen million eight hundred ninety-one thousand four hundred eighty-eight dollars (\$317,891,488) for the 1994-95 fiscal year shall be used to generally provide a four percent (4%) permanent salary increase and a one percent (1%) compensation bonus for State employees, community college employees, and certain public school personnel.

(b) Of the funds appropriated in this act from the Highway Fund to the Reserve for Salary Increases, the sum of eighteen million dollars (\$18,000,000) for the 1994-95 fiscal year shall be used to generally provide a four percent (4%) permanent salary increase and a one percent (1%) compensation bonus for employees paid from that fund.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont

### GOVERNOR'S SALARY INCREASE

Sec. 7.1. G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~ninety-three thousand seven hundred seventy-seven dollars (\$93,777)~~ ninety-seven thousand six hundred dollars (\$97,600) annually, payable monthly."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
COUNCIL OF STATE/SALARY INCREASE

Sec. 7.2. Section 49 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 49. The annual salaries for members of the Council of State, payable monthly, for the ~~1993-94 and 1994-95 fiscal years~~ year are:  
Council of State Annual Salary

Lieutenant Governor	<del>\$77,289</del> 87,000
Attorney General	<del>77,289</del> 87,000
Secretary of State	<del>77,289</del> 87,000
State Treasurer	<del>77,289</del> 87,000
State Auditor	<del>77,289</del> 87,000
Superintendent of Public Instruction	<del>77,289</del> 87,000
Agriculture Commissioner	<del>77,289</del> 87,000
Insurance Commissioner	<del>77,289</del> 87,000
Labor Commissioner	<del>77,289</del> 87,000."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
NONELECTED DEPARTMENT HEAD/SALARY INCREASES

Sec. 7.3. Section 50 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 50. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the ~~1993-94 and 1994-95 fiscal years~~ year are:

<u>Nonelected Department Heads</u>	<u>Annual Salary</u>
Secretary of Administration	<del>\$77,289</del> 85,000
Secretary of Correction	<del>77,289</del> 85,000
Secretary of Crime Control and Public Safety	<del>77,289</del> 85,000
Secretary of Cultural Resources	<del>77,289</del> 85,000
Secretary of Commerce	<del>77,289</del> 85,000
Secretary of Environment, Health, and Natural Resources	<del>77,289</del> 85,000
Secretary of Human Resources	<del>77,289</del> 85,000
Secretary of Revenue	<del>77,289</del> 85,000
Secretary of Transportation	<del>77,289</del> 85,000."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

Sec. 7.4. (a) Section 51(a) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(a) The annual salaries, payable monthly, for the ~~1993-94 and 1994-95~~ fiscal years year for the following executive branch officials are:



<u>Executive Branch Officials</u>	<u>Annual Salary</u>
Chairman, Alcoholic Beverage Control Commission	\$74,389 77,365
State Controller	120,301 108,271
Commissioner of Motor Vehicles	74,389 77,365
Commissioner of Banks	74,389 77,365
Chairman, Employment Security Commission	74,389 77,365
State Personnel Director	77,289 85,000
Chairman, Parole Commission	67,926 70,643
Members of the Parole Commission	62,712 65,220
Chairman, Industrial Commission	66,837 69,510
Members of the Industrial Commission	65,209 67,817
<u>Chairman of the Utilities Commission</u>	81,381
<u>Commissioner of the Utilities Commission</u>	80,381
Executive Director, Agency for Public Telecommunications	62,712 65,220
General Manager, Ports Railway Commission	56,628 58,893
Director, Museum of Art	76,225 79,274
Executive Director, Wildlife Resources Commission	64,205 66,773
Executive Director, North Carolina Housing Finance Agency	92,063 95,746
Executive Director, North Carolina Agricultural Finance Authority	72,406 75,302
Director, Office of Administrative Hearings	65,674 76,500."

(b) G.S. 62-10(h) reads as rewritten:

"(h) The salary of each commissioner and that of the commissioner designated as chairman shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as chairman shall receive one thousand dollars (\$1,000) additional per annum, set by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. 'Service' means service as a member of the Utilities Commission."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
LEGISLATORS/SALARY AND EXPENSES INCREASE

Sec. 7.5. Effective upon convening of the 1995 Regular Session of the General Assembly, G.S. 120-3 reads as rewritten:

"§ 120-3. *Pay of members and officers of the General Assembly.*

(a) The Speaker of the House shall be paid an annual salary of ~~thirty-six thousand three hundred thirty-four dollars (\$36,334)~~, thirty-eight thousand one hundred fifty-one dollars (\$38,151) payable monthly, and an expense allowance of ~~one thousand three hundred forty-six dollars (\$1,346)~~ one thousand four hundred thirteen dollars (\$1,413) per month. The President Pro Tempore of the Senate shall be paid an annual salary of ~~thirty-six thousand three hundred thirty-four dollars (\$36,334)~~, thirty-eight thousand one hundred fifty-one dollars (\$38,151) payable monthly, and an expense allowance of ~~one thousand three hundred forty-six dollars (\$1,346)~~ one thousand four hundred thirteen dollars (\$1,413) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of ~~twenty thousand seven hundred four dollars (\$20,704)~~ twenty-one thousand seven hundred thirty-nine dollars (\$21,739) payable monthly, and an expense allowance of ~~seven hundred ninety-six dollars (\$796.00)~~ eight hundred thirty-six dollars (\$836.00) per month. The Deputy President Pro Tempore of the Senate shall be paid an annual salary of ~~twenty thousand seven hundred four (\$20,704)~~ twenty-one thousand seven hundred thirty-nine dollars (\$21,739) payable monthly, and an expense allowance of ~~seven hundred ninety-six dollars (\$796.00)~~ eight hundred thirty-six dollars (\$836.00) per month. The majority and minority leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of ~~sixteen thousand two hundred thirty-six dollars (\$16,236)~~ seventeen thousand forty-eight dollars (\$17,048) payable monthly, and an expense allowance of ~~six hundred thirty-four dollars (\$634.00)~~ six hundred sixty-six dollars (\$666.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts. Accordingly, upon convening of the 1995 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of ~~thirteen thousand two hundred eighty-seven dollars (\$13,287)~~ thirteen thousand nine hundred fifty-one dollars (\$13,951) payable monthly, and an expense allowance of ~~five hundred thirty-two dollars (\$532.00)~~ five hundred fifty-nine dollars (\$559.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission."

Requested by: Representatives Nesbitt, Diamont, Senators Daniel, Plyler  
GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

Sec. 7.6. G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~forty-seven thousand six hundred twenty dollars (\$47,620)~~ fifty-four thousand dollars (\$54,000)

payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
SERGEANT-AT-ARMS AND READING CLERKS/SALARY INCREASES

Sec. 7.7. G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~two hundred twenty-three dollars (\$223.00)~~ two hundred thirty-two dollars (\$232.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
LEGISLATIVE EMPLOYEES/SALARY INCREASES

Sec. 7.8. The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1993-94 by four percent (4%). Nothing in this act limits any of the provisions of G.S. 120-32.

Requested by: Senators Daniel, Plyler, Representatives Hensley, Nesbitt, Diamont

JUDICIAL BRANCH OFFICIALS/SALARY INCREASE

Sec. 7.9. (a) Section 56(a) of Chapter 321 of the Session Laws of 1993 reads as rewritten:

"(a) The annual salaries, payable monthly, for specified judicial branch officials for ~~fiscal year 1993-94 and~~ fiscal year 1994-95 are:

Judicial Branch Officials	Annual Salary	
Chief Justice, Supreme Court	<del>93,777</del>	<u>97,600</u>
Associate Justice, Supreme Court	<del>91,855</del>	<u>96,000</u>
Chief Judge, Court of Appeals	<del>88,930</del>	<u>93,600</u>
Judge, Court of Appeals	<del>86,996</del>	<u>92,000</u>
Judge, Senior Regular Resident Superior Court	<del>79,823</del>	<u>89,500</u>
Judge, Superior Court	<del>77,289</del>	<u>87,000</u>
Chief Judge, District Court	<del>68,256</del>	<u>79,000</u>
Judge, District Court	<del>65,674</del>	<u>76,500</u>
District Attorney	<del>71,965</del>	<u>80,600</u>
<del>Assistant District Attorney — an</del>		
<del>average of —</del>	<del>46,738</del>	
Administrative Officer of the Courts	<del>79,823</del>	<u>89,500</u>

Assistant Administrative Officer  
of the Courts  
Public Defender  
~~Assistant Public Defender — an~~  
~~average of~~

65,160	75,160
71,965	80,600.
46,738.	

If an acting senior regular resident superior court judge is appointed under the provisions of G.S. 7A-41, he shall receive the salary for Judge, Senior Regular Resident, Superior Court, until his temporary appointment is vacated, and the judge he replaces shall receive the salary indicated for Judge, Superior Court.

~~The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed forty-six thousand seven hundred thirty-eight dollars (\$46,738), and the minimum salary of any assistant district attorney or assistant public defender is at least twenty-three thousand eight hundred sixty-two dollars (\$23,862) effective July 1, 1993."~~

(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed forty-eight thousand six hundred eight dollars (\$48,608), and the minimum salary of any assistant district attorney or assistant public defender is at least twenty-four thousand eight hundred sixteen dollars (\$24,816) effective July 1, 1994.

(c) The salaries in effect for fiscal year 1993-94 for permanent, full-time employees of the Judicial Department, except for those whose salaries are itemized in this Part, shall be increased by four percent (4%), commencing July 1, 1994.

(d) The salaries in effect for fiscal year 1993-94 for all permanent, part-time employees of the Judicial Department shall be increased on and after July 1, 1994, by pro rata amounts of the four percent (4%).

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont, Hensley, Redwine, Crawford  
CLERK OF SUPERIOR COURT SALARY DETERMINATION/  
INCREASE

**Sec. 7.10.** (a) G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary	
Less than 100,000	\$48,391	57,670
100,000 to 149,999	54,621	64,780
150,000 to 249,999	62,247	71,890
250,000 and above	68,256.	79,000.

The salary schedule in this subsection is intended to represent the following percentage of the salary of a chief district court judge:

Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

(b) The increase required for the new annual salaries provided in subsection (a) of this section shall be funded from funds available to the Administrative Office of the Courts for fiscal year 1994-95.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont, Redwine, Crawford

#### ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASE

**Sec. 7.11.** G.S. 7A-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a), the Administrative Officer of the Courts shall establish an incremental salary plan for assistant clerks and for deputy clerks based on a series of salary steps corresponding to the steps contained in the Salary Plan for State Employees adopted by the Office of State Personnel, subject to a minimum and a maximum annual salary as set forth below. On and after July 1, 1985, each assistant clerk and each deputy clerk shall be eligible for an annual step increase in his salary plan based on satisfactory job performance as determined by each clerk. Notwithstanding the foregoing, if an assistant or deputy clerk's years of service in the office of superior court clerk would warrant an annual salary greater than the salary first established under this section, that assistant or deputy clerk shall be eligible on and after July 1, 1984, for an annual step increase in his salary plan. Furthermore, on and after July 1, 1985, that assistant or deputy clerk shall be eligible for an increase of two steps in his salary plan, and shall remain eligible for a two-step increase each year as recommended by each clerk until that assistant or deputy clerk's annual salary corresponds to his number of years of service. Any person covered by this subsection who would not receive a step increase in fiscal year ~~1993-94~~ 1994-95 because that person is at the top of the salary range as it existed for fiscal year ~~1992-93~~ 1993-94 shall receive a salary increase to the maximum annual salary provided by subsection (c1) of this section."

**Sec. 7.12.** G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks <u>and Head Bookkeeper</u>	Annual Salary	
Minimum	\$20,712	<u>21,126</u>



Maximum	35,967	37,406
Deputy Clerks	Annual Salary	
Minimum	\$16,560	16,891
Maximum	27,705.	28,813."

Requested by: Senators Odom, Ballance, Gulley, Blackmon, Marshall, Daniel, Plyler, Representatives Nesbitt, Diamont, Redwine

**RAISE EDUCATIONAL QUALIFICATIONS OF MAGISTRATES/  
MODIFY MAGISTRATES' PAY PLAN**

**Sec. 7.13.** (a) G.S. 7A-171.2 reads as rewritten:

"§ 7A-171.2. *Qualifications for nomination or renomination.*

(a) In order to be eligible for nomination or for renomination as a magistrate an individual ~~must~~ shall be a resident of the county for which he is appointed.

(b) ~~To be eligible for nomination as a magistrate, an individual must have successfully completed a high school education, or have qualified for a certificate of high school equivalency, or have successfully completed the course of basic training prescribed by G.S. 7A-177. To be eligible for nomination as a magistrate, an individual shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.~~

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date.

(c) In order to be eligible for renomination as a magistrate an individual ~~must~~ shall have successfully completed the course of basic training for magistrates prescribed by G.S. 7A-177.

(d) Notwithstanding any other provision of this subsection, an individual who holds the office of magistrate on July 1, 1977, shall not be required to have successfully completed the course of basic training for magistrates prescribed by G.S. 7A-177 in order to be eligible for renomination as a magistrate."

(b) G.S. 7A-171.1 reads as rewritten:

"§ 7A-171.1. *Duty hours, salary, and travel expenses within county.*

(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate.

(1) ~~A full-time magistrate, so designated by the Administrative Officer of the Courts, magistrate shall be paid the annual salary indicated in the table below according to the number of years he has served~~

as a magistrate. The salary steps shall take effect on the anniversary of the date the magistrate was originally appointed; set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

<u>Number of Prior Years of Service</u>	<u>Annual Salary</u>
<u>Less than 1</u>	<u>\$17,399</u>
<u>1 or more but less than 3</u>	<u>18,293</u>
<u>3 or more but less than 5</u>	<u>20,092</u>
<u>5 or more but less than 7</u>	<u>22,075</u>
<u>7 or more but less than 9</u>	<u>24,290</u>
<u>9 or more but less than 11</u>	<u>26,702</u>
<u>11 or more</u>	<u>29,333.</u>
	<u>Annual Salary</u>
<u>Entry Rate</u>	<u>\$22,958</u>
<u>Step 1</u>	<u>25,262</u>
<u>Step 2</u>	<u>27,770</u>
<u>Step 3</u>	<u>30,506</u>
<u>Step 4</u>	<u>33,503</u>
<u>Step 5</u>	<u>36,797</u>
<u>Step 6</u>	<u>40,420.</u>

A 'Full-time magistrate' is a magistrate who is assigned to work an average of not less than 40 hours a week during his term of office. Notwithstanding any other provision of this subdivision, a full-time magistrate, who was serving as a magistrate on December 31, 1978, and who was receiving an annual salary in excess of that which would ordinarily be allowed under the provisions of this subdivision, shall not have the salary, which he was receiving reduced during any subsequent term as a full-time magistrate. That magistrate's salary shall be fixed at the salary level from the table above which is nearest and higher than the latest annual salary he was receiving on December 31, 1978, and, thereafter, shall advance in accordance with the schedule in the table above.

- (2) A part-time magistrate, so designated by the Administrative Officer of the Courts, is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and 135-40.2(a) and magistrate is a magistrate who is assigned to work an average of less than 40 hours of work a week during the term, except that no magistrate shall be assigned an average of less than 10 hours of work a week during the term. A part-time magistrate is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and

G.S. 135-40.2(a). The Administrative Officer of the Courts designates whether a magistrate is a part-time magistrate. A part-time magistrate shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during his the term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

A 'part-time magistrate' is a magistrate who is assigned to work an average of less than 40 hours of work a week during his term. No magistrate may be assigned an average of less than 10 hours of work a week during his term.

Notwithstanding any other provision of this subdivision, upon reappointment as a magistrate and being assigned to work the same or greater number of hours as he worked as a magistrate for a term of office ending on December 31, 1978, a person who received an annual salary in excess of that to which he would be entitled under the formula contained in this subdivision shall receive an annual salary equal to that received during the prior term. That magistrate's salary shall increase in accordance with the salary formula contained in this subdivision.

- (3) Notwithstanding any other provision of this section, a magistrate with a two-year Associate in Applied Science degree in criminal justice or paralegal training from a North Carolina community college or the equivalent degree from a private educational institution in North Carolina, shall receive the annual salary provided in the table above for a magistrate with three years of service in addition to those which the magistrate has served; a magistrate with a four-year degree from an accredited senior institution of higher education shall receive the annual salary provided in the table above for a magistrate with five years of service in addition to those which the magistrate has served; a magistrate who holds a law degree from an accredited law school shall receive the annual salary provided in the table above for a magistrate with seven years of service in addition to those which the magistrate has served; and a magistrate who is licensed to practice law in North Carolina shall receive the annual salary provided in the table above for a magistrate with nine years of service in addition to those which the magistrate has served.

Magistrates with a two or four-year degree or a law degree described herein who became magistrates before July 1, 1979 are entitled to an increase of three, five and seven years, respectively, in their seniority, for pay purposes only. Full-time magistrates licensed to practice law in North Carolina who became magistrates before July 1, 1979 are entitled to the pay of a magistrate with 9 or more years of service, and part-time magistrates holding a law

~~degree or a license to practice law as described above who became magistrates before July 1, 1979 are entitled to a proportionate adjustment in their pay. Pay increases authorized by this paragraph of this subdivision are not retroactive. Notwithstanding any other provision of this subsection, an individual who, when initially appointed as a full-time magistrate, is licensed to practice law in North Carolina, shall receive the annual salary provided in the Table in subdivision (1) of this subsection for Step 4. This magistrate's salary shall increase to the next step every four years on the anniversary of the date the magistrate was originally appointed. An individual who, when initially appointed as a part-time magistrate, is licensed to practice law in North Carolina, shall be paid an annual salary based on that for Step 4 and determined according to the formula in subdivision (2) of this subsection. This magistrate's salary shall increase to the next step every four years on the anniversary of the date the magistrate was originally appointed. The salary of a full-time magistrate who acquires a license to practice law in North Carolina while holding the office of magistrate and who at the time of acquiring the license is receiving a salary at a level lower than Step 4 shall be adjusted to Step 4 and, thereafter, shall advance in accordance with the Table's schedule. The salary of a part-time magistrate who acquires a license to practice law in North Carolina while holding the office of magistrate and who at the time of acquiring the license is receiving an annual salary as determined by subdivision (2) of this subsection based on a salary level lower than Step 4 shall be adjusted to a salary based on Step 4 in the Table and, thereafter, shall advance in accordance with the provision in subdivision (2) of this subsection.~~

- (4) ~~Notwithstanding any other provision of this section, a magistrate with 10 years' experience within the last 12 years as a sheriff or deputy sheriff, administrative officer for a district attorney, city or county police officer, campus police officer, wildlife officer, or highway patrolman in the State of North Carolina, or with 20 years' experience as a sheriff or deputy sheriff, city or county police officer, campus police officer, wildlife officer, or highway patrolman in the State of North Carolina, or with 10 years' experience within the last 12 years as clerk of superior court or an assistant or deputy clerk of court in the State of North Carolina shall receive the annual salary provided in the table in subdivision (1) for a magistrate with five years of service in addition to those the magistrate has served. A magistrate who qualifies for the increased salary under both subdivisions (3) and (4) of this subsection shall receive either the salary determined under subdivision (3) or that determined under subdivision (4), whichever is higher, but no more.~~

(a1) ~~Notwithstanding subsection (a) of this section, the following salary provisions apply to individuals who were serving as magistrates on June 30, 1994:~~

- (1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

<u>Less than 1 year of service</u>	<u>\$ 18,095</u>
<u>1 or more but less than 3 years of service</u>	<u>19,025</u>
<u>3 or more but less than 5 years of service</u>	<u>20,896.</u>

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a).

- (2) The salaries of magistrates who on June 30, 1994, were paid at a salary level of five or more years of service shall be based on the rates set out in subsection (a) as follows:

<u>Salary Level on June 30, 1994</u>	<u>Salary Level on July 1, 1994</u>
<u>5 or more but less than</u>	
<u>7 years of service</u>	<u>Entry Rate</u>
<u>7 or more but less than</u>	
<u>9 years of service</u>	<u>Step 1</u>
<u>9 or more but less than</u>	
<u>11 years of service</u>	<u>Step 2</u>
<u>11 or more years of service</u>	<u>Step 3.</u>

Thereafter, their salaries shall be set in accordance with the provisions in subsection (a).

- (3) The salaries of magistrates who are licensed to practice law in North Carolina shall be adjusted to the annual salary provided in the table in subsection (a) as Step 4, and, thereafter, their salaries shall be set in accordance with the provisions in subsection (a).
- (4) The salaries of 'part-time magistrates' shall be set under the formula set out in subdivision (2) of subsection (a) but according to the rates set out in this subsection.

(5) (a2) The Administrative Officer of the Courts shall provide magistrates with longevity pay at the same rates as are provided by the State to its employees subject to the State Personnel Act.

(b) Notwithstanding G.S. 138-6, a magistrate may not be reimbursed by the State for travel expenses incurred on official business within the county in which the magistrate resides."

(c) Subsection (a1) of G.S. 7A-171.1, as added by subsection (b) of this section, expires June 30, 1999.

(d) Notwithstanding the provisions of G.S. 7A-171.1 or G.S. 7A-171.2, as rewritten by this act, any magistrate hired on or after July 1, 1994 and before the date of ratification of this act shall be treated as though they were employed on June 30, 1994, if the magistrate does not possess the educational and experience qualifications required by this section.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
AUTHORIZED TRANSFERS/SALARY ADJUSTMENT FUNDS

**Sec. 7.14.** The Director of the Budget may transfer to General Fund budget codes from the General Fund salary adjustment appropriation, and may transfer to Highway Fund budget codes from the Highway Fund salary



adjustment appropriation, amounts required to support approved salary adjustments made necessary by difficulties in recruiting and holding qualified employees in State government. The funds may be transferred only when the use of salary reserve funds in individual operating budgets is not feasible.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**COMMUNITY COLLEGES PERSONNEL/SALARY INCREASES**

**Sec. 7.15.** The Director of the Budget shall transfer from the Reserve for Salary Increases created in Sections 3 and 4 of this act for fiscal year 1994-95 funds to the Department of Community Colleges necessary to provide an average annual salary increase of four percent (4%), including funds for the employer's retirement and social security contributions, commencing July 1, 1994, for all permanent full-time community college institutional personnel supported by State funds. The State Board of Community Colleges shall establish guidelines for providing their salary increases to community college institutional personnel. Salary funds shall be used to provide an average annual salary increase of four percent (4%) to all full-time employees and part-time employees on a pro rata basis.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont, Michaux  
**UNIVERSITY OF NORTH CAROLINA SYSTEM - EPA SALARY INCREASES**

**Sec. 7.17.** (a) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Salary Increases created in this act for fiscal year 1994-95 to provide a salary increase of one percent (1%), including funds for the employer's retirement and social security contributions, commencing July 1, 1994, for all employees of The University of North Carolina, as well as employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA).

(b) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Salary Increases created in this act for fiscal year 1994-95 to provide an annual average salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 1994, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

(c) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for

Salary Increases created in this act for fiscal year 1994-95 to provide an annual average salary increase of five percent (5%), including funds for the employer's retirement and social security contributions, commencing July 1, 1994, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont, Barnes

#### UNIVERSITY OF NORTH CAROLINA COMPETITIVE FACULTY SALARY LEVELS

Sec. 7.18. Of the funds appropriated in this act to the Board of Governors of The University of North Carolina for University Institutional Programs, the sum of ten million seven hundred four thousand four hundred thirty-eight dollars (\$10,704,438) for the 1994-95 fiscal year shall be allocated by the Board of Governors to improve competitive national peer rankings and to enhance teaching faculty salaries, including those of the Institute of Government. These funds represent approximately two percent (2.00%) of salary funds for those teaching faculty whose salaries are exempt from the State Personnel Act (EPA), including funds for employer retirement and social security contributions, and are in addition to the seven million one hundred thousand dollars (\$7,100,000) appropriated in Section 3 of Chapter 321 of the 1993 Session Laws (also see Section 101.1 of that Chapter).

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont

#### MOST STATE EMPLOYEES/SALARY INCREASES/1994-95

Sec. 7.19. (a) The salaries in effect June 30, 1994, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act, and who are paid from the General Fund or the Highway Fund shall be increased, on or after July 1, 1994, unless otherwise provided by this act, by four percent (4%).

(b) Except as otherwise provided in this act, salaries in effect June 30, 1994, for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by four percent (4%), commencing July 1, 1994.

(c) The salaries in effect June 30, 1994, for all permanent part-time State employees shall be increased on and after July 1, 1994, by pro rata amounts of the salary increases provided for permanent full-time employees covered under subsection (a) of this section.

(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase on and after July 1, 1994, in accordance with subsections (a), (b), or (c) of this section, including funds

for the employer's retirement and social security contributions, of the permanent full-time and part-time employees of the agency.

(e) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts salary increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 1994.

(f) The provisions of this section shall be applied to employees whose salaries are determined in accordance with G.S. 7A-102 at two percent (2%) rather than four percent (4%), except that employees who would not receive a salary increment for the 1994-95 fiscal year under G.S. 7A-102 because they are at the top of their salary range will be moved to the new top of their salary range, which is increased by four percent (4%). The salary ranges for employees covered by G.S. 7A-102 set out in Section 7.12 of this act reflect this action.

(g) No person may receive a salary increase under G.S. 126-7 during the 1994-95 fiscal year.

Requested by: Representatives Nesbitt, Diamont, Barnes, Senators Daniel, Plyler

COMPENSATION	BONUS/STATE	EMPLOYEES/SCHOOL
PERSONNEL		

**Sec. 7.20.** (a) Any person:

(1) Whose salary is set by or under this Part, other than Sections 7.2, 7.3, 7.5, 7.6, 7.9(a) except the Chief Justice of the North Carolina Supreme Court, 7.10, 7.24, the State Personnel Director or the Director, Office of Administrative Hearings; and

(2) Who was, on July 1, 1994 a permanent officer or permanent employee whose salary is set by or under this Part

shall receive not later than August of 1994 a compensation bonus of one percent (1%), except that the compensation bonus for persons subject to Section 7.15 of this act shall be an average of one percent (1%) per year and shall be allocated in accordance with guidelines adopted by the State Board of Community Colleges, except that the compensation bonus for persons subject to Sections 7.17 of this act shall be an average of one percent (1%) per year and shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and except that the guidelines and rules may cover employees of those institutions whose first day of employment for the 1994-95 academic year came after July 1, 1994.

(a1) Any person:

(1) Who did not receive a compensation bonus under subsection (a) of this section; and

(2) Who was, during the third payroll period of the 1994-95 school year either a:

- a. Permanent public school employee whose salary is set by or under this Part; or
- b. Public school bus driver, covered by Section 7.24 of this act shall receive in the third payroll period of the 1994-95 school year a compensation bonus of one percent (1%) of the annual salary for that position.

(b) The annual salary on which the percentage bonus is based is the annual salary in effect during the pay period in which the bonus is paid.

(c) The Director of the Budget shall transfer from the Reserve for Compensation Bonus provided by this act sufficient funds to implement this section.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**CERTAIN PUBLIC SCHOOL EMPLOYEES' SALARY INCREASE**

**Sec. 7.24.** (a) Superintendents, Assistant Superintendents, Associate Superintendents, Supervisors, Directors, Coordinators, Evaluators, and Program Administrators. -- The Director of the Budget may transfer from the Reserve for Salary Increases created in this act for fiscal year 1994-95 funds necessary to provide a salary increase of four percent (4%), including funds for the employer's retirement and social security contributions, commencing July 1, 1994, for all superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, and program administrators whose salaries are supported from the State's General Fund. These funds may not be used for any purpose other than for the salary increase and necessary employer contributions provided by this subsection.

(b) Noncertified Employees. -- The Director of the Budget may transfer from the Reserve for Salary Increases created in this act for fiscal year 1994-95 funds necessary to provide a salary increase of four percent (4%), including funds for the employer's retirement and social security contributions, commencing July 1, 1994, for all noncertified public school employees, except school bus drivers, whose salaries are supported from the State's General Fund. These funds may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this subsection.

(c) The fiscal year 1993-94 pay rates adopted by local boards of education for school bus drivers shall be increased by at least four percent (4%) on and after July 1, 1994, to the extent that such rates of pay are supported by the allocation of State funds from the State Board of Education. Local boards of education shall increase the rates of pay for all school bus drivers who were employed during fiscal year 1993-94 and who continue their employment for fiscal year 1994-95 by at least four percent (4%) on and after July 1, 1994. The Director of the Budget may transfer from the salary increase reserve fund created in this act for fiscal year 1994-95 funds necessary to provide the salary increases for school bus drivers whose salaries are supported from the State's General Fund in accordance with the provisions of this subsection.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES**

**Sec. 7.25.** (a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

(c) The salary increases provided in this Part are to be effective July 1, 1994, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, 1994, or to employees involved in final written disciplinary procedures. The employee shall receive the increase on a current basis when the final written disciplinary procedure is resolved.

Payroll checks issued to employees after July 1, 1994, which represent payment of services provided prior to July 1, 1994, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(d) The Director of the Budget shall transfer from the Reserve for Salary Increases in Sections 3 and 4 of this act for fiscal year 1994-95 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

(e) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

(f) Section 4 of Chapter 591 of the 1993 Session Laws is repealed.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**SALARY-RELATED CONTRIBUTIONS/EMPLOYERS**

**Sec. 7.26.** (a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income and disability salary continuation benefits.



(b) Effective July 1, 1994, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1994-95 fiscal year are (i) ten and ninety-six hundredths percent (10.96%) - Teachers and State Employees; (ii) fifteen and ninety-six hundredths percent (15.96%) - State Law Enforcement Officers; (iii) nine percent (9.00%) - University Employees' Optional Retirement Program; (iv) twenty-two and sixty-five hundredths percent (22.65%) - Consolidated Judicial Retirement System; and (v) thirty-six and seven hundredths percent (36.07%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes forty-two hundredths percent (0.42%) for the Disability Income Plan.

(c) The Board of Trustees of the Teachers' and State Employees' Retirement System shall take no action to freeze the liquidation period until instructed by the General Assembly.

(d) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 1994-95 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees - one thousand three hundred twenty-one dollars (\$1,321); and (ii) Non-Medicare-eligible employees and retirees - one thousand seven hundred thirty-six dollars (\$1,736).

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
RESTORATION OF THE TWELFTH MONTH TEACHER PAYROLL

Sec. 7.27. (a) The funds appropriated in this act to the Office of State Budget and Management for a Reserve for Paydate Restoration in the amount of one hundred twenty million dollars (\$120,000,000) shall be used to restore the twelfth month of teacher payroll for school teachers paid from the General Fund.

In no event shall any allotments made pursuant to this section exceed the actual General Fund requirements.

(b) G.S. 143-15.3(b) reads as rewritten:

"(b) The Director may not use funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly. ~~It is the intent of the General Assembly that effective as of the 1994-95 fiscal year the State's liability for the deferral of the twelfth month of teacher payroll shall be eliminated. Funds may be used from the Savings Reserve Account and, to the extent necessary, may be combined with other available funds to eliminate this liability and thus bring the State into conformity with the GAAP.~~"

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
STATE EMPLOYEE SUBSISTENCE ALLOWANCE

Sec. 7.27A. G.S. 138-6(a)(3) reads as rewritten:

"(3) For expenses incurred for subsistence, payment of ~~fifty-five dollars (\$55.00)~~ seventy-one dollars (\$71.00) per day when

traveling in-state or ~~sixty-seven dollars (\$67.00)~~ eighty-three dollars (\$83.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

- a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;
- b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business; or
- c. When the State employee is a member of a State board, commission, committee, or council which operates from funds deposited with the State Treasurer, and the lunch is preplanned as part of the meeting for the entire board, commission, committee, or council."

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
PER DIEM/MILEAGE CONFORM TO FEDERAL CHANGES

**Sec. 7.28.** Effective upon convening of the 1995 Regular Session of the General Assembly, G.S. 120-3.1(a) reads as rewritten:

"(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

- (1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 92-104, December 28, 1992, Rev. Proc. 93-51, December 27, 1993.
- (2) A travel allowance at the rate which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 92-104, December 28, 1992, Rev. Proc. 93-51, December 27, 1993, whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.
- (3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 57 Federal Register 6684 (February 27, 1992), 58 Federal Register 67959 (December 22, 1993), while the General Assembly is in session and, except as

otherwise provided in this subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House in the case of Representatives Nesbitt, Diamont or the President Pro Tempore of the Senate in case of Senators, the member is:

- a. Traveling as a representative of the General Assembly or of its committees or commissions, or
- b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty-six dollars (\$26.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Administrative Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at ~~57 Federal Register 6678-6687 (February 27, 1992) and at 57 Federal Register 24474-24477 (June 9, 1992).~~ 58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994).

- (4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission."

Requested by: Representatives Nesbitt, Diamont, Senators Daniel, Plyler  
**FLEXIBLE COMPENSATION - MAKE PERMANENT A PROVISION ALLOWING SAVINGS IN EMPLOYER FICA CONTRIBUTIONS TO BE USED TO PAY FOR ADMINISTRATIVE EXPENSES OF FLEXIBLE COMPENSATION PROGRAMS FOR STATE EMPLOYEES AND EMPLOYEES OF EDUCATIONAL INSTITUTIONS SUPPORTED BY THE STATE.**

**Sec. 7.28A.** Section 14(i) of Chapter 1044 of the 1991 Session Laws, as amended by Section 42 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"(i) Subsections (a) through (d) of this section are effective January 1, 1990. Subsections (e) through (h) of this section are effective January 1, 1991. Subsections (a) through (h) of this section shall expire December 31, ~~1994, 1997.~~"

Requested by: Senators Harris, Daniel, Plyler, Representatives Hensley, Diamont, and Nesbitt  
**INCLUDE EXPENSE ALLOWANCES AS COMPENSATION UNDER THE LEGISLATIVE RETIREMENT SYSTEM**

**Sec. 7.29.** (a) Effective upon the convening of the 1995 Regular Session of the General Assembly, G.S. 120-4.8(5) reads as rewritten:

"(5) 'Compensation' means salary and expense allowance paid for service as a legislator for service in the North Carolina General Assembly, exclusive of travel, per diem and expense allowances, travel and per diem."

This subsection applies to expense allowance paid on or after January 1, 1994. Effective August 1, 1994, payroll deductions of compensation, as redefined by this section, shall be made. Payroll deductions for expense allowance to cover the period from January 1, 1994, through July 31, 1994, shall be made prior to December 31, 1994.

(b) This section applies to expense allowances paid on or after January 1, 1994.

Requested by: Senators Harris, Daniel, Plyler, Sherron, Representatives Diamont, Nesbitt, Lee, Hensley

CHANGE THE METHOD FOR CALCULATING THE REDUCTION FOR EARLY RETIREMENT IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; TO INCREASE THE RETIREMENT FORMULA WITH AN ADJUSTING INCREASE TO RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM; TO PROVIDE AN INCREASE TO RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM AND THE JUDICIAL RETIREMENT SYSTEM; TO MAKE CHANGES IN THE LEGISLATIVE RETIREMENT SYSTEM AND TO ALLOW RECIPROCITY BETWEEN THE DISABILITY INCOME PLAN OF NORTH CAROLINA AND THE DEATH BENEFIT PLAN FOR MEMBERS OF THE LEGISLATIVE RETIREMENT SYSTEM AND THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM; AND TO REMOVE THE EXCLUSION FOR WAR-RELATED DISABILITIES FROM THE DISABILITY INCOME PLAN

Sec. 7.30. (a) G.S. 128-24(5)a reads as rewritten:

"a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable

~~service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b1), provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or eligible former law enforcement officer."~~

(b) G.S. 128-27 is amended by adding a new subsection to read:

"(a1) Early Service Retirement Benefits. -- Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service."

(c) G.S. 128-27(b13) reads as rewritten:

"(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, 1992, but before July 1, 1994. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.
  - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.



- b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3)."

(d) G.S. 128-27 is amended by adding a new subsection to read:

"(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1994. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3)."

- (e) G.S. 135-3(8)a reads as rewritten:

"a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforesaid requirement of 15 or more years of creditable service shall be

reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesaid requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. ~~Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969.~~ Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested."

- (f) G.S. 135-3(8) is amended by adding a new subdivision to read:

"b3. Vested deferred retirement allowance of members retiring on or after July 1, 1994. -- In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer."

(g) G.S. 135-5 is amended by adding a new subsection to read:

"(al) Early Service Retirement Benefits. -- Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service."

(h) G.S. 135-5(b14) reads as rewritten:

"(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, 1993, but before July 1, 1994. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.
  - b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent (1/3 of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.
  - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent

(1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

- c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135(b14)(2)b [G.S. 135-5(b14)(2)b.].
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by ~~G.S.~~ G.S. 135-5(b)."

(i) G.S. 135-5 is amended by adding a new subsection to read:

"(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.
  - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
    - 1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
    - 2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service

or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
  - 1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
  - 2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
  - 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b)."

(j) G.S. 135-5(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. -- Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that ~~all three of~~ the following conditions apply:

- ~~(1) The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance or had attained 20 years of creditable service.~~



- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b15)(1)b. or G.S. 135-5(b15)(2)c., notwithstanding the requirement of obtaining age 50.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term 'in service' as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter."

(k) G.S. 120-4.22A is amended by adding a new subsection to read:

"(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994."

(l) G.S. 128-27 is amended by adding two new subsections to read:

"(mm) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. -- From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1993 General Assembly in 1994.

(nn) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by two and eight-tenths percent (2.8%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1994, the retirement allowance to or on

account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of two and eight-tenths percent (2.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994."

(m) G.S. 135-5 is amended by adding two new subsections to read:

"(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. -- From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994."

(n) G.S. 135-65 is amended by adding a new subsection to read:

"(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994."

(o) Effective January 1, 1995, through December 31, 1996, any current member or former member of the General Assembly may purchase any legislative service for which the member does not have credit in the Legislative Retirement System by paying an amount equal to seven percent (7%) of the compensation on the last date of eligibility as provided for in G.S. 120-4.16, plus interest compounded annually equal to the average yield on the pension accumulation fund since that date.

(p) Effective February 1, 1995, G.S. 120-4.21 reads as rewritten:

*"§ 120-4.21. Service retirement benefits.*

(a) Eligibility; Application. -- Any member ~~in service~~ may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member ~~in service~~ may retire with reduced benefits who has reached the age of 50 years with 20 years of creditable service or 60 years with five years of creditable service. The member shall make written

application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 90 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. -- Upon retirement from service in accordance with subsection (a) of this section before July 1, 1990, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his 'highest annual salary,' multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ( $1/4$  of 1%) for each month his retirement date precedes his 65th birthday.

(b1) Computation. -- Upon retirement from service in accordance with subsection (a) of this section on or after July 1, 1990, but before February 1, 1995, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his 'highest annual salary,' multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ( $1/4$  of 1%) for each month his retirement date precedes his 65th birthday.

(b2) Computation. -- Upon retirement from service in accordance with subsection (a) of this section on or after February 1, 1995, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his 'highest annual salary,' multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ( $1/4$  of 1%) for each month his retirement date precedes his 65th birthday.

(3) For a member whose retirement date occurs on or after his 50th birthday and before his 60th birthday and upon completion of 20 years of creditable service, computation as in subdivision (2) of this subsection, reduced by the same percentage as provided for in Article 1 of Chapter 135 of the General Statutes.

(c) Limitations. -- In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his 'highest

annual salary' nor shall he receive any service retirement allowance whatever while employed in a position that makes him a contributing member of any of the following retirement systems: The Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, ~~the Law Enforcement Officers' Retirement System, the Uniform Judicial Retirement System of North Carolina, the Uniform Solicitorial Retirement System of North Carolina or the Uniform Clerks of Courts Retirement System, or the Consolidated Judicial Retirement System.~~ If he should become a member of any of these systems, payment of his service retirement allowance shall be suspended until he withdraws from membership in that system."

(q) Effective July 1, 1994, Article 6 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"§ 135-114. Reciprocity of membership service with the Legislative Retirement System and the Consolidated Judicial Retirement System.

Only for the purpose of determining eligibility for benefits accruing under this Article, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time."

(r) Effective July 1, 1994, G.S. 135-5 is amended by adding a new subsection to read:

"(11) Reciprocity of Death Benefit Plan. -- Only for the purpose of determining eligibility for the death benefit provided for in subsection (l) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(l) be paid if a death benefit is paid under G.S. 135-63."

(s) G.S. 135-101(6) reads as rewritten:

"(6) 'Disability' or 'Disabled' shall mean the mental or physical incapacity for the further performance of duty of a participant or



beneficiary; provided that such incapacity was not the result of ~~war, whether declared or not, armed or unarmed military or paramilitary conflict,~~ terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury."

(t) G.S. 135-105(c) reads as rewritten:

"(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit period as may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent (50%) of 1/12th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand dollars (\$3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. The monthly benefit shall be further reduced by the amount of any payments from the federal Veterans Administration, any other federal agency, or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, that should a participant have earnings in an amount greater than the short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit."

(u) G.S. 135-106(b) reads as rewritten:

"(b) After the commencement of benefits under this section, the benefits payable under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced by any primary Social Security disability benefits and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled, ~~but the benefits payable shall be no less than ten dollars (\$10.00) a month.~~ entitled. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Veterans Administration, any other federal agency or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Notwithstanding the foregoing, upon the completion of four years from the conclusion of the



waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan."

(v) Subsections (s) through (u) of this section are effective January 1, 1988, provided, however, that in applying the provisions of G.S. 135-101, 135-105, and 135-106, as amended by this section to any person who was denied disability benefits, such person shall have 180 days after ratification of this act in which to make a timely application for such benefits.

(w) Except as otherwise provided, this section becomes effective July 1, 1994.

Requested by: Senators Sherron, Carpenter, Daniel, Plyler, Representatives Nesbitt, Diamont

MODIFY THE BENEFIT RESTRICTIONS FOR REEMPLOYED RETIREES IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, AND IN THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM

Sec. 7.31. (a) G.S. 128-24(5)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance be ~~reemployed~~ reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a ~~permanent full-time,~~ part-time, temporary, interim, or on fee-for-service basis, whether contractual or otherwise, ~~the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:~~

1. ~~Salary or fees or both in excess of one thousand five hundred dollars (\$1,500) per month;~~
2. ~~Salary or fees or both in excess of thirteen thousand five hundred dollars (\$13,500) during any consecutive 12 calendar months;~~
3. ~~Salary or fees or both during any consecutive 12 calendar months, which is greater than fifty percent (50%) of the reported compensation during the 12 months of service preceding the effective date of retirement; or~~

4. ~~Salary or fees or both during any month, which when added to the retirement allowance at retirement exceeds the monthly compensation earned immediately prior to retirement, if reemployed by the same employer within 90 days of the effective date of retirement.~~

~~The suspension of the retirement allowance shall be effective as of the first day of the month in which the beneficiary meets the conditions set forth in conditions 1 or 4 of this paragraph and effective as of the first day of the next succeeding month following the month in which the beneficiary meets the conditions set forth in conditions 2 or 3 of this paragraph. The retirement allowance shall be reinstated the month following termination of reemployment or the month following the month in which the conditions set forth in this paragraph are no longer met. The Board of Trustees may adjust the monetary limits in this paragraph by an amount equivalent to any across-the-board salary increase granted to employees of the State by the General Assembly. Each employer shall report information monthly to the Board of Trustees on forms provided by the Board on each reemployed beneficiary sufficient for the effective enforcement of this paragraph. Notwithstanding the foregoing, any beneficiary may irrevocably elect to recommence membership in the Retirement System immediately upon being restored to service, whereupon the retirement allowance shall cease, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%)."~~

- (b) G.S. 128-24(5)d. reads as rewritten:

"d. ~~Should a A beneficiary who retired on an early or service retirement allowance be whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute~~

thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification."

(c) G.S. 135-1(10) reads as rewritten:

"(10) 'Employee' shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term 'employee' shall not include any person who is a member of the Uniform Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, 'employee' shall include all employees of the General Assembly except participants in the Legislative Intern Program and pages. Program, pages, and reemployed beneficiaries in receipt of a monthly retirement allowance under this Chapter. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. 'Employee' shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held

by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above-described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision."

(d) G.S. 135-3(8)c. reads as rewritten:

- "c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, be reemployed by an employer participating in the Retirement System on a permanent full-time, part-time, temporary, interim, or on fee-for-service basis, whether contractual or otherwise, the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:
1. Salary or fees or both in excess of one thousand five hundred dollars (\$1,500) per month;
  2. Salary or fees or both in excess of thirteen thousand five hundred (\$13,500) during any consecutive 12 calendar months;
  3. Salary or fees or both during any consecutive 12 calendar months, which is greater than fifty percent (50%) of the

~~reported compensation during the 12 months of service preceding the effective date of retirement; or~~

- ~~4. Salary or fees or both during any month, which when added to the retirement allowance at retirement exceeds the monthly compensation earned immediately prior to retirement, if reemployed by the same employer within 90 days of the effective date of retirement.~~

~~The suspension of the retirement allowance shall be effective as of the first day of the month in which the beneficiary meets the conditions set forth in conditions 1 or 4 of this paragraph and effective as of the first day of the next succeeding month following the month in which the beneficiary meets the conditions set forth in conditions 2 or 3 of this paragraph. The retirement allowance shall be reinstated the month following termination of reemployment or the month following the month in which the conditions set forth in this paragraph are no longer met. The Board of Trustees may adjust the monetary limits in this paragraph by an amount equivalent to any across-the-board salary increase granted to employees of the State by the General Assembly. Each employer shall report information monthly to the Board of Trustees on forms provided by the Board on each reemployed beneficiary sufficient for the effective enforcement of this paragraph. Notwithstanding the foregoing, any beneficiary may irrevocable elect to recommence membership in the Retirement System immediately upon being restored to service, whereupon the retirement allowance shall cease, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%)."~~

- (e) G.S. 135-3(8)d. reads as rewritten:

"d. Should a ~~A~~ beneficiary who retired on an early or service retirement allowance under this Chapter be ~~whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is~~ restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the



beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
  2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.
- e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989."
- (f) This section becomes effective January 1, 1995.

Requested by: Representatives Nesbitt, Diamont, Senators Daniel, Plyler  
ENHANCED EMPLOYEE HEALTH PACKAGE RECOMMENDATIONS

Sec. 7.32. The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall recommend to the 1995 General Assembly no later than March 1, 1995 an enhanced benefit package, which shall include a wellness component.

## PART 8. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Senator Martin of Pitt, Representative Bowman

**RESERVE FOR IMPLEMENTATION OF FEDERAL OSHA REGULATIONS REGARDING BLOODBORNE PATHOGENS/USE OF FUNDS; LONG-RANGE PLAN**

**Sec. 8.** Funds appropriated in this act to the Office of State Budget and Management for the implementation of the federal OSHA regulations regarding bloodborne pathogens shall be used only to support the cost of testing, inoculations, personal protective equipment, and required cleanup equipment and supplies for employees who are subject to these regulations and only if adequate funds are not available for these purposes. They shall not be used as planning money or for salaries for any new positions or for any other purpose than specifically authorized by this section.

**BUDGET REFORM STATEMENTS/APPROPRIATIONS ADJUSTMENTS**

**Sec. 8.1.** The General Fund and availability used in developing the 1993-95 budget is as shown below:

	<u>1993-94</u>	<u>1994-95</u>	
		<u>Recurring</u>	<u>Nonrecurring</u>
<b>AVAILABILITY:</b>			
Estimated Remaining			
Balance from 1993-94	\$ -	\$ -	\$593.9
Unappropriated Balance			
from the 1993 Session	4.7	209.6	-
Revenue Forecast Increase	329.3	329.3	-
Additional Increases:			
Insurance Fund	-	1.1	-
Non-Tax Revenue	-	2.7	-
Total Availability	<u>\$334.0</u>	<u>\$542.7</u>	<u>\$593.9</u>
1994 Crime Session			
Appropriations	\$ 26.9	\$168.3	\$ 61.5
Unobligated Availability	307.1		
1993-94 Estimated Reversions	<u>284.9</u>		
Total Credit Balance	<u>\$592.0</u>		
<b>Earmarking:</b>			
Savings Reserve	148.0		
Repairs and Renovations			
Reserve	60.0		
Reserve for Tax Relief	-	\$ 28.1	
Total Earmarking	<u>\$ 208.0</u>	<u>\$ 28.1</u>	
Balance	\$ 384.0	\$346.3	\$532.4

## Additional Availability:

Disproportionate Share Funds (Earmarked)	114.2	-	-
Disproportionate Share Funds - Additional	95.7	-	94.0
Total Additional Availability	<u>\$209.9</u>	-	<u>\$94.0</u>
Budget Reductions	-	231.3a	3.7
TOTAL BALANCE	\$593.9	\$577.6	\$630.1

a. Includes move of Senate Bill 2 recurring funds from the Department of Public Education into the compensation increase reserve in the expansion budget; and the shift of Career Development from recurring to nonrecurring.

Requested by: Senators Daniel, Plyler  
RESERVE FOR TAX RELIEF

Sec. 8.2. The General Assembly, after assessing the needs of the State, determines that the sum of twenty-eight million one hundred thousand dollars (\$28,100,000) of available revenue should not be expended for current operations but rather should be reserved for future tax relief. Therefore, there is established a Reserve for Tax Relief in which these funds shall be held for future action by the General Assembly.

Requested by: Representative Holt, Senator Odom  
CRIMINAL JUSTICE INFORMATION NETWORK FUNDS

Sec. 8.3. (a) The Office of State Budget and Management may use the sum of nine hundred thirty thousand dollars (\$930,000) placed in a reserve in Section 13 of Chapter 24 of the Session Laws of the 1994 Extra Session to continue studying the development of the Criminal Justice Information Network according to the criteria enumerated in Section 13 of Chapter 24 of the Session Laws of the 1994 Extra Session.

(b) Subsection (b) of Section 13 of Chapter 24 of the Session Laws of the 1994 Extra Session reads as rewritten:

"(b) There is created within the Office of State Budget and Management a Criminal Justice Information Network study committee to conduct the study required under this section. The study committee shall be appointed by the Governor in consultation with the Lieutenant Governor, the Attorney General, and the Chief Justice of the North Carolina Supreme Court. The Governor shall appoint no more than nine members to the study committee, and shall make the appointments based upon the appointees' knowledge, expertise, and responsibility within the criminal justice system, the juvenile justice system, and related areas. All State and local government agencies shall cooperate fully with the study committee. Prior to expenditure of funds for a consultant to assist in the study, the study committee shall report to the Joint Legislative Commission on Governmental Operations on the consultant selected, the work products to be provided by the consultant, and the cost of the contract, including an itemization of the cost components. The request

for proposals shall notify potential bidders that the committee will report this information to the Joint Legislative Commission on Governmental Operations. The request for proposals shall also contain a provision that reads as follows:

'Eligibility for Future Requirements: The successful bidder on this project shall not be considered for an award on subsequent hardware, software, and software support and related procurements which are based on specifications or recommendations resulting from this procurement.'

The Division of Purchase and Contract and the Office of State Budget and Management may delete this provision in the request for proposals by jointly (i) filing a written request with the Director of the Budget for authorization to delete this provision from the request for proposals; (ii) sending a copy of this written request for authorization to the Director of the Fiscal Research Division at the time the request is made; (iii) receiving written authorization to delete the provision from the Director of the Budget; and (iv) reporting the authorization, if granted, to the next meeting of the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

The study committee shall provide a monthly report on its progress (i) to the Chairs of the Senate and House Appropriations Committees, (ii) to the Chairs of the Senate and House Justice and Public Safety Appropriations Subcommittees, and (iii) to the Information Resources Management Commission established by G.S. 143B-426.21 at the regularly scheduled meetings of the Commission. The study committee shall report its final findings and recommendations to the General Assembly on or before February 1, 1995, April 1, 1995, and shall make an interim report by May 15, 1994."

Requested by: Representatives Crawford, Wainwright, Senator Plexico  
STATE GRANT-IN-AID CATALOG

**Sec. 8.4.** The Office of State Budget and Management, in cooperation with the Office of State Planning, shall compile and publish annually a catalog of grant-in-aid programs administered by State agencies. The grant-in-aid catalog shall be organized similarly to the Catalog of Domestic Federal Assistance. The grant-in-aid catalog shall assign a unique alphanumeric identifier to each grant-in-aid program and the identifier shall be included in the accounting key of the State Accounting System so that expenditure information can be readily retrieved and analyzed. Further, the grant-in-aid catalog shall contain the following information:

- (1) The name of each grant-in-aid program.
- (2) The name and business address of the administering agency, together with the telephone number of a contact person in the agency who is familiar with the grant-in-aid program.
- (3) A brief description of the purposes of the grant-in-aid program, along with a citation of the State or federal law authorizing the program.

- (4) A brief description of eligibility criteria, typical levels of grant award, number of grants awarded during the previous fiscal year, and funds available during the current and upcoming fiscal year.
- (5) Any other information that would serve to explain program features to the public and to interested applicants.

The Office of State Budget and Management and the Office of State Planning shall report to the General Assembly by February 1, 1995, regarding the progress in compiling and publishing a catalog of State grant-in-aid programs.

Requested by: Representatives Nesbitt, Diamont, Senators Daniel, Plyler  
**SCHOOL TECHNOLOGY RESERVE**

**Sec. 8.5.** Of the availability in the General Fund at the beginning of the 1994-95 fiscal year that is not required to balance the 1994-95 adopted budget and has not been appropriated to the Savings Reserve Account, the sum of forty-two million dollars (\$42,000,000) shall be placed in the School Technology Reserve. Funds in this Reserve shall be used for learning and instructional management technology only and shall be spent only in accordance with legislation enacted by the 1995 General Assembly subsequent to its consideration of the January 15, 1995, report of the Commission on School Technology.

## **PART 9. GENERAL ASSEMBLY**

Requested by: Senator Plexico, Senator Martin of Guilford, Representatives Crawford, Wainwright

### **FINANCIAL AUDIT OF THE DEPARTMENT OF INSURANCE**

**Sec. 9.** Of the funds appropriated in this act to the General Assembly, Legislative Services Commission, the sum of seventy-five thousand dollars (\$75,000) for the 1994-95 fiscal year shall be used to contract for an independent financial audit of the Department of Insurance in accordance with the auditing standards set forth in Government Auditing Standards. The audit shall be completed on or before January 15, 1995.

Requested by: Senator Plexico, Representatives Crawford, Wainwright, Redwine

### **JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE STEERING COMMITTEE**

**Sec. 9.1.** Of the funds appropriated in this act to the General Assembly, the sum of twenty-five thousand dollars (\$25,000) in the 1994-95 fiscal year may be used for the following purposes:

- (1) To support the official activities of the Joint Legislative Commission on Seafood and Aquaculture Steering Committee, and
- (2) To support the official activities of the Appeals Panel established under Section 3 of Chapter 576 of the 1993 Session Laws. Members of the Appeals Panel who are not employees of the State shall receive, in addition to the allowances provided under G.S. 138-5, compensation at the rate of one hundred fifty dollars



(\$150.00) per diem in lieu of the per diem compensation provided in G.S. 138-5(a)(1).

Requested by: Representatives Wilkins, Mercer, Crawford, Wainwright, Senator Plexico

**LRC STUDY CORPORATE ANNUAL REPORT FILING REQUIREMENT AND THE BUSINESS LICENSE INFORMATION OFFICE**

**Sec. 9.2.** (a) The Legislative Research Commission may study whether the requirement under G.S. 55-16-22 that a corporation file an annual report with the Secretary of State should be modified. The Commission may consider in its study the benefits and detriments of the filing requirement, the financial burden placed on the Secretary of State's Office and on corporations by the filing requirement, and any other issues relevant to the filing requirement. The Commission may also study the Business License Information Office's master application system, the costs of the system to the State, the benefits of the system to the business community, and any other issues related to the master application system or the Business License Information Office. The Legislative Research Commission may make its recommendations and submit an interim report to the 1995 General Assembly, Regular Session 1996, and may make a final report to the 1997 General Assembly.

(b) Of the funds appropriated in this act to the General Assembly for the 1994-95 fiscal year the sum of twenty-five thousand dollars (\$25,000) is allocated to the Legislative Research Commission to conduct this study.

Requested by: Representatives Mercer, Crawford, Wainwright, Senator Plexico

**STUDY ALTERNATIVE METHODS TO FUND FIREMEN'S AND RESCUE SQUAD WORKER'S PENSION FUNDS.**

**Sec. 9.3.** (a) There is established the Firefighter and Rescue Worker Pension Fund Study Commission to be composed of 10 members: five members to be appointed by the Speaker of the House of Representatives and five members to be appointed by the President Pro Tempore of the Senate. The appointees shall serve until the termination of the Commission. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from their appointees. Either Cochair may call the first meeting of the Commission. Vacancies shall be filled in the same manner as the original appointments were made.

(b) The Commission shall study alternative methods to increase the funding for the Firemen's Pension Fund and the Rescue Squad Worker's Pension Fund and any other issues relevant to that topic.

(c) With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of the House and Senate supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services

Commission, the Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

(d) The Study Commission shall submit a final written report of its findings and recommendations, including legislation, on or before the convening of the 1995 Session of the General Assembly. All reports shall be filed with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate.

(e) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1.
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.
- (3) All other Commission members at the rate established in G.S. 138-5.

(f) There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission's studies reserve to the Firefighter and Rescue Worker Pension Fund Study Commission for its work the sum of twenty thousand dollars (\$20,000) for the 1994-95 fiscal year.

Requested by: Senator Perdue

#### PUBLIC SCHOOL FINANCE STUDY

**Sec. 9.4.** Public School Finance. The Legislative Research Commission may study federal, State, and local sources of funding for public school programs and facilities, including the allotment of funds under the Basic Education Program, the low-wealth and small system supplemental funding formulas, the Critical School Facility Needs Fund, the Public School Building Capital Fund, and any other State funds earmarked for public schools. The Commission may report the results of its study to the 1995 General Assembly.

### PART 10. GENERAL GOVERNMENT

Requested by: Representatives Crawford, Wainwright, Gray, Hensley, Robinson, Senator Plexico

#### INFORMATION HIGHWAY FUNDS

**Sec. 10.1.** (a) The General Assembly encourages the concept of a switched broadband information highway run by private sector industry, where the State could be a customer, that would (i) enhance the delivery of education, health care, and other services to all of the people of North Carolina and (ii) promote economic development throughout all the counties of North Carolina.

(b) Seven million dollars (\$7,000,000) in nonrecurring funds are appropriated in this act to the Office of the State Controller for the North Carolina Information Highway. These funds shall be used to provide one-time grants not to exceed one hundred thousand dollars (\$100,000) per site

to qualified State or local governmental entities who establish Information Highway sites. To qualify for a grant, a State or local governmental entity must: (i) file an application with the Office of State Controller by November 1, 1994, (ii) present a plan for the use of the grant funds and for the use of the Information Highway site, and (iii) demonstrate its willingness and ability to pay all of the expenses associated with the use and operations of the site. The State Controller shall administer the grants program established by this section after consulting with and receiving the recommendations of the Information Highway Grants Advisory Council.

(c) The Information Highway Grants Advisory Council is created within the Office of the State Controller. The Council shall consist of 18 members as follows:

- (1) Five members to be appointed by the Governor.
- (2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.
- (3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.
- (4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.
- (5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.
- (6) One representative from the The University of North Carolina to be designated by the President of The University of North Carolina.
- (7) One representative from the Office of the State Controller, to be designated by the State Controller.
- (8) One representative from the North Carolina School of Science and Mathematics, to be designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the member of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(d) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochairs. A majority of the members of the Council shall constitute a quorum. The Office of the State Controller shall provide staff and space to the Council.

(e) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and the Office of the State Controller on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding

grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The State Controller shall notify the Information Highway Grants Advisory Council as to whom the intended grant recipients are fifteen days prior to awarding the grants.

(f) The Information Highway Grants Advisory Council and the State Controller shall report to the 1995 General Assembly regarding the grants program for the North Carolina Information Highway. Upon request, the Information Highway Grants Advisory Council and the State Controller shall report to the Joint Legislative Education Oversight Committee and to any other legislative oversight committees.

(g) Those State and local entities that have expended monies prior to June 1, 1994, on Information Highway equipment shall receive preferential consideration in expenditures pursuant to this section.

(h) It is the intent of the General Assembly that those programs receiving grants for the North Carolina Information Highway be reviewed after a three year period to determine the benefits of the programs. No one shall obligate the State to pay any nonrecurring or recurring costs related to the North Carolina Information Highway except to the extent that funds are appropriated by the General Assembly specifically for that purpose. No one shall obligate the State to pay any recurring costs related to the North Carolina Information Highway beyond the end of the fiscal period for which funds are appropriated for that purpose.

In no event shall anyone obligate the State to pay recurring operating expenses related to the North Carolina Information Highway for any non-State entity.

(i) Notwithstanding any other law, funds in the amount of four million one hundred thousand dollars (\$4,100,000) appropriated to the Office of the State Controller in Chapter 561 of the 1993 Session Laws for the 1993-94 fiscal year for the State Telecommunications System shall revert to the General Fund.

## PART 11. DEPARTMENT OF ADMINISTRATION

Requested by: Senator Plexico, Representatives Wainwright, Crawford  
DOMESTIC VIOLENCE CENTER FUNDS TRANSFERRED

**Sec. 11.** (a) Funds appropriated to the Department of Administration for domestic violence centers in Chapter 321 and Chapter 561 of the 1993 Session Laws are transferred to the Domestic Violence Center Fund established under G.S. 50B-9.

(b) Section 31 of Chapter 321 of the 1993 Session Laws, as amended by Section 30 of Chapter 561 of the 1993 Session Laws, reads as rewritten:

"Sec. 31. The funds appropriated to the Department of Administration, the North Carolina Council for Women, for the 1993-94 fiscal year and for the 1994-95 fiscal year for domestic violence centers shall be allocated ~~equally among domestic violence centers in operation on July 1, 1993, that offer services including a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and that fulfill other criteria established by the Department of Administration. Grants shall be awarded based on criteria established by the~~

~~Department of Administration and disbursed on a quarterly basis. The North Carolina Coalition against Domestic Violence, Incorporated, is eligible for a grant of ten thousand dollars (\$10,000) under this section, administered in accordance with G.S. 50B-9, except that the North Carolina Coalition Against Domestic Violence, Incorporated shall not receive a grant from funds appropriated under this act that exceeds ten thousand dollars (\$10,000)."~~

Requested by: Representatives Crawford, Wainwright, Senators Plexico, Martin of Guilford

**GPAC/BUDGET REFORM: STRATEGIC PLANS, PERFORMANCE-BASED BUDGETING, LONG-RANGE FINANCIAL MODEL**

**Sec. 11.1. State Strategic Planning and Outcome Measures:**

(a) G.S. 143A-17 is repealed.

(b) G.S. 143-3.5 reads as rewritten:

"§ 143-3.5. Coordination of ~~statistics~~ statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

(a) It shall be the duty of the ~~Director~~ Director, through the Office of State Budget and Management and the Office of State Planning to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The ~~Office shall~~ Director shall:

- (1) Prepare and release the official demographic and economic estimates and projections for the State;
- (2) Conduct special economic and demographic analyses and studies to support statewide budgeting;
- (3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;
- (4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation; and,
- (5) Develop and maintain in cooperation with other State and local governmental agencies, an information system providing comparative data on resources and expenditures of local ~~governments, governments;~~ and
- (6) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years.

Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect. To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual



arrangements, State agencies must submit to the Director proposed procedures and funding requirements.

(b) Any bill proposed by an executive or judicial department, agency, institution, board, or commission that affects the State budget shall be accompanied by a fiscal analysis. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect.

(c) This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission, or any other committee or commission in the legislative branch."

(c) Article 1 of Chapter 143 of the General Statutes is amended by adding the following sections to read:

"§ 143-10.3. Strategic planning process.

(a) The Director, through the Office of State Budget and Management, shall establish and implement a strategic planning process for State government. The strategic planning process shall be designed to produce statewide goals, and State agencies shall develop agency goals and objectives that are consistent with those statewide goals. The Director, in conjunction with State agencies, shall prepare and apply performance measures and indicators of program impact, and shall require agency performance to be reviewed periodically to determine progress toward statewide goals and agency goals. Results of the strategic planning process and agency performance reviews shall be reflected in the budget document proposed by the Governor, as provided in G.S. 143-10.4.

The performance measures and indicators of program impact for each agency shall be based upon clear, unambiguous goals that are established by that agency. The Director shall be responsible for developing and implementing statewide comprehensive performance measures and indicators of program impact in a standardized format applicable across agency lines.

(b) If a member of the Council of State does not agree with the performance measures, departmental operations plans, and indicators of program impact developed in accordance with this section, G.S. 143-10.4, and G.S. 143-10.5, that apply to the member's department, the member of the Council of State shall submit to the Director of the Budget a statement of specific objections to the program measures and indicators of program impact. The Director of the Budget shall submit the statement to the General Assembly in accordance with G.S. 143-11(5).

"§ 143-10.4. Departmental operations plans.

The Director, through the Office of State Budget and Management and in conjunction with State agencies, shall have prepared biennially in the even-numbered years, a comprehensive operations plan for each department, agency, and institution, for which the Director may recommend an appropriation of State funds in the next biennial period. The operations plans shall address the statewide and agency goals contained in the strategic plans developed in accordance with G.S. 143-10.3. The operations plans shall provide objectives, activities, and supporting statistics for the current biennium and for the following three biennial periods. The operations plans shall also provide clear, unambiguous performance measures and outcome

indicators, which measures and indicators shall be used for program evaluation and shall be reported in the Governor's biennial budget submission.

The Director shall provide unified planning and budgeting instructions to the departments, agencies, and institutions for use in developing operations plans and biennial budgets.

"§ 143-10.5. Development of performance measures for major programs.

(a) The Director of the Budget, through the Office of State Budget and Management and through State agencies, departments, and institutions, shall develop performance measures for the major programs for each State agency, department, and institution. These performance measures shall be developed as part of the biennial comprehensive plan and shall serve as the basis for the development of the biennial budget, beginning with the 1995-97 fiscal biennium.

(b) The Director shall institute a standard process for developing program performance measures and for evaluating performance results, uniform performance measurement terms, and a standardized format for presentation.

(c) The program performance measurement system shall include:

- (1) A description of the key performance measures for the program. The performance measures should include: program efficiency or unit cost, outputs or program activity, and outcomes or performance results, with emphasis on the use of program outcome measures.
- (2) Identification and description of the current level of performance.
- (3) Targets for the desired level of performance.
- (4) Identification of future performance measures that should be developed and a time frame for development.
- (5) A methodology for regular monitoring of departmental, agency, and institutional performance in relation to the measure.
- (6) A methodology for assessing programs that have achieved the desired performance targets through innovative management actions.

(d) The Director of the Budget shall prepare a comprehensive plan for the implementation of a performance measurement system and shall present the plan to the General Assembly at the same time the 1995-97 fiscal biennium budget is submitted to the General Assembly. With regard to programs for which it is anticipated that performance measures will not be fully developed by that date, the Director of the Budget shall submit to the General Assembly at that time, a plan and timetable for the development and implementation of performance measures. In developing the plan, consideration shall be given to any recommendations and reports of the Governmental Accounting Standards Board. In the event the Director shall conclude that it is not feasible to develop performance measures for particular programs, the Director shall set forth detailed reasons for the conclusion in the report.

(e) Beginning in 1996, the Director of the Budget shall report to the General Assembly no later than February 1 in odd-numbered years and no later than April 1 in even-numbered years on:

- (1) The status of the development of the program performance measurement system.
- (2) The programs that have not achieved the desired level of performance and the reasons performance targets were not achieved.
- (3) The programs that have achieved performance targets through management innovation.

"§ 143-10.6. Responsibilities of other State agencies.

All State agencies, departments, and institutions shall cooperate with the Director of the Budget to assist in the implementation of strategic planning, departmental planning, and performance budgeting. The Director of the Budget may assign any responsibility to any State agency, department, or institution as appropriate or needed to implement strategic planning, departmental planning, and performance budgeting."

(d) G.S. 143-11 reads as rewritten:

"§ 143-11. Survey of departments.

On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5 of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding ~~appropriation~~ fiscal year, for the current ~~appropriation~~ fiscal year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital ~~outlays~~ improvements.

The Director shall accompany the budget with:

- (1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.
- (2) State Controller reports including:
  - a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.
  - b. A statement of special funds.
- (2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two ~~appropriation~~ fiscal years.
- (3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.
- (4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.
- (5) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.
- (6) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

**Sec. 11.2. *Implement Performance Budgeting:*** The Director of the Budget shall develop a plan for preparing the 1995-97 fiscal biennium budget in a performance budget format. In developing the plan, consideration shall be given to the program areas of health and safety, environment, correction, justice, social and economic well-being, and economic development and commerce, for which funding shall be provided. The performance budget format shall include the following:



- (1) A description of the resources previously expended and proposed for each major program, including expenditures and numbers of employees.
- (2) A description of the goals, objectives, and need for programs, including statutory requirements.
- (3) A description of the principal program services and activities performed in order to meet program goals and the resources allocated to the major program services.
- (4) A description of the efficiency, or unit cost, of providing program services and activities.
- (5) A presentation of information on program performance and accomplishments in relation to performance measures established by the Director of the Budget in the department plan, as prescribed in G.S. 143-10.4 and G.S. 143-10.5.
- (6) Line item detail on expenditure data shall be provided at the single digit level consistent with the State Accounting System (SAS) chart of accounts as prescribed by the State Controller. The source and amounts of funding for each program shall be identified.
- (7) Any changes in the proposed scope of any budget elements, other than to provide for increases in costs due to inflation, shall include explanations as to the impact of the expected changes upon the outputs and performance outcomes of that element subprogram or program.

**Sec. 11.3. Annual Financial Model Required:**

G.S. 143-15.1 reads as rewritten:

"§ 143-15.1. *Current Operations Appropriations Act- Act; General Fund Financial Model.*

(a) The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. The Current Operations Appropriations Act shall state the amount of General Fund appropriations availability upon which the General Fund budget is based. The statement of availability shall list separately the beginning General Fund credit balance, General Fund revenues, and any other components of the availability amount.

The General Fund operating budget appropriations, including appropriations for local tax reimbursements and local tax sharing, for the second year in a Current Operations Appropriations Act that contains a biennial budget shall not be more than two percent (2%) greater than the General Fund operating budget appropriations for the first year of the biennial budget.

(b) The General Assembly shall review the results of the General Fund Financial model, a computer- based financial model used to project long-term expenditure and revenue trends under various simulations, in its budget deliberations. The model shall be maintained and, from time to time, updated by the Fiscal Research Division of the General Assembly."



Requested by: Representatives Crawford, Wainwright, Richardson, Senator Plexico

#### STATE VETERANS HOME

**Sec. 11.4.** Subsection (a) of Section 31 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"Sec. 31. (a) It is the intent of the General Assembly that ~~no State funds shall be appropriated in future years to support operational costs of the State Veterans Home in Fayetteville. Fayetteville receive its primary income from fees, charges, and reimbursements, and that State appropriated funds be made available only in the event that other sources are insufficient to cover essential operating costs.~~"

Requested by: Representatives Michaux, Crawford, Wainwright, Senator Plexico

#### RENOVATIONS OF THE OLD REVENUE AND OLD EDUCATION BUILDINGS

**Sec. 11.5.** The Office of State Construction of the Department of Administration shall schedule the renovations of the Old Revenue and Old Education Buildings so that the agencies who have been designated as the primary tenants for those buildings may move into them as soon as possible. To the extent practical, the Office of State Construction shall conduct the renovations in phases so as to expedite the occupancy of the Old Revenue and Old Education Buildings.

Requested by: Representatives Colton, Diamont, Easterling, Crawford, Wainwright, Senator Plexico

#### DAY CARE FACILITY TASK FORCE

**Sec. 11.6.** (a) Of the funds appropriated in this act or otherwise available to the Department of Administration for the 1994-95 fiscal year, the Department of Administration shall develop an innovative, state-of-the-art day care facility in the central government complex in compliance with Article 7, Chapter 110 of the General Statutes and upon the advice and recommendation of the North Carolina Day Care Facility Task Force. The facility shall serve as a highly visible project demonstrating the State's commitment to early childhood developmental care.

(b) There is created the North Carolina Day Care Facility Task Force within the Department of Administration for organizational, budgetary, and administrative purposes only. The Task Force shall be composed of nine members of whom three members are ex officio and six are appointed, as follows:

- (1) The Director of the Division of Child Development, Department of Human Resources;
- (2) The Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
- (3) The Superintendent of Public Instruction;
- (4) Two members of the Child Day-Care Commission, one appointed by the President Pro Tempore of the Senate and one appointed by the Speaker of the House of Representatives;

- (5) Two members of the public appointed by the Governor, one of whom is a parent using day care services;
- (6) A member of the Senate appointed by the President Pro Tempore of the Senate; and
- (7) A member of the House of Representatives appointed by the Speaker of the House of Representatives.

The ex officio members may designate a representative from their departments, divisions, or offices to represent them on the Task Force.

(c) All members of the Task Force are voting members. All appointments shall be made by and terms commence on August 1, 1994. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. The Governor shall appoint a chair of the Task Force biennially from the membership of the Task Force.

(d) The Task Force shall:

- (1) Advise the Department of Administration regarding selection of a site for the State day care facility;
- (2) Advise the Department of Administration on matters related to developing the site into a safe, well-equipped, educational day care facility;
- (3) Advise the Department of Administration on matters related to standards of employment and personnel performance;
- (4) Advise the Department of Administration on developing guidelines for selecting children who shall be eligible for admission into the day care facility, including children of State employees, inner-city residents of the City of Raleigh, private citizens, and disabled children and other children who qualify for federal assistance;
- (5) Advise the Department of Administration on setting payment rates of persons who use the day care facility, taking into account ability to pay, State and federal subsidies, and access to federal and other funding;
- (6) Advise the Department of Administration on the feasibility of contracting the operations of the day care facility to private corporations or establishing a nonprofit corporation to operate the facility;
- (7) Periodically assess the operations of the State day care facility;
- (8) Conduct a feasibility study of developing a day care facility at Dorothea Dix Hospital; and
- (9) Report to the 1995 General Assembly on the progress of developing the day care facility, including progress in selecting a site for the facility, renovating the site to house the facility, hiring staff, and the costs associated with the facility.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**UPGRADE SATELLITE AND MICROWAVE SYSTEM**

**Sec. 11.7.** Funds appropriated to the Department of Administration in Section 4 of Chapter 561 of the 1993 Session Laws, for Public Telecommunications upgrade satellite system, shall be reallocated for the 1994-95 fiscal year to be used along with federal funds to upgrade Public Telecommunication's existing satellite and microwave systems.

## PART 12. DEPARTMENT OF CULTURAL RESOURCES

Requested by: Senators Plyler, Plexico, Representatives Wainwright, Crawford

## CULTURAL RESOURCES FUNDS REALLOCATION

**Sec. 12.** Of the funds appropriated in Section 4 of Chapter 561 of the 1993 Session Laws to the Department of Cultural Resources for the Museum of History - Core Exhibition Design and Construction, the sum of seven hundred thousand dollars (\$700,000) for the 1994-95 fiscal year shall be reallocated in the following amounts and shall be used for the following purposes:

- (1) \$300,000 for the Museum of the Cape Fear,
- (2) \$50,000 for the Thomas Day House,
- (3) \$50,000 for the Newbold White House,
- (4) \$50,000 for the Albemarle-Stanly County Historic Preservation Commission,
- (5) \$150,000 for the Chinqua-Penn Plantation - Planning Grant,
- (6) \$50,000 for the Union County Arts Council, and
- (7) \$50,000 for the Captain White House

Requested by: Representatives Crawford, Wainwright, Colton, Senator Plexico

## ART IN STATE BUILDINGS/ADMINISTRATIVE COSTS

**Sec. 12.1.(a)** G.S. 143-408.3 reads as rewritten:

"§ 143-408.3. *Definitions.*

In this Article, unless the context otherwise requires, the following definitions shall apply:

- (1) 'Construction' means construction, reconstruction, remodeling, or renovation.
- (2) 'Contracting officer' means the public officer or body responsible for securing the preparation of plans and specifications for the purpose of negotiating or advertising for bids for the construction of a State building.
- (3) 'Designer' means an architect or engineer licensed in North Carolina.
- (4) 'Principal user' means the State agency which will be the principal occupant of the proposed State building. However, in cases where more than one agency will occupy a building, 'principal user' means the Secretary of the Department of Administration.
- (5) 'State building' means any permanent structure together with all grounds and appurtenant structures which are intended as offices; laboratories; workshops; courtrooms; hearing or meeting rooms; medical, dental, library, or museum space for use by the general public; or other space for carrying on the functions of a State agency which is to be constructed, reconstructed, remodeled, or renovated using an appropriation of State funds when the amount appropriated for that purpose exceeds ~~five hundred thousand dollars (\$500,000).~~ one million dollars (\$1,000,000).

- (6) 'Works of art' or 'art works' includes, but is not limited to, paintings, sculptures, fountain sculptures, frescoes, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, silk screens, etchings, and lithographs. The term 'works of art' or 'art works' shall not include any reproductions of original art by mechanical means."

(b) G.S. 143-408.4 reads as rewritten:

"§ 143-408.4. *Appropriations and procedure for inclusion of art works.*

(a) One-half of one percent (0.5%) of the amount ~~spent~~ appropriated for the construction of each State building, not including the amount of funds used for land acquisition, shall be used for the acquisition of works of art for that building.

(b) The amount to be expended for the acquisition of art works for the building shall be included in the stated limit of the design contract and the amount shall also be incorporated by the designer in his total cost estimate for construction.

(c) If the contracting officer, the principal user and the Secretary of Administration jointly determine and certify in writing that, due to the use of the building or other reasons, a particular construction project is not appropriate for the placement of art works the provisions of this Article shall not apply, or, if not appropriate for the expenditure of a full one-half percent (0.5%) of the amount ~~spent~~ appropriated for construction as defined in G.S. 143-408.3, then in some percentage up to one-half percent.

(d) The selection and commissioning of artists and the acquisition and execution of works of art for State buildings undertaken pursuant to this Article shall be exempt from the provisions of all State bidding requirements. Expenditures for works of art as provided in this Article shall be contracted for separately from all other items in the construction project.

(e) Of the one-half of one percent (0.5%) of the amount ~~appropriated~~ appropriated, or, in cases when an appropriation has been made for planning or design only, the amount approved by the Office of State Construction for the construction cost of a State building ~~which that is~~ dedicated to the acquisition of works of art pursuant to subsection (a) of this section, no more than ~~eight percent (8%)~~ twenty percent (20%) of those funds may be used for the administrative costs of acquiring the art works. Funds for the administrative costs for acquisition of the art works shall be disbursed to the Department of Cultural Resources at the time the design contract is signed.

(e1) Of the one-half of one percent (0.5%) of the amount estimated for the construction cost of a State building that is dedicated to the acquisition of works of art pursuant to subsection (a) of this section, up to ten percent (10%) of the funds reserved for the artist's fee may be used as advanced planning funds to enable the artist, upon selection, to develop working drawings and to incorporate plans for the art work in the construction documents for the State building. Funds for advanced planning shall be disbursed at the time the artist's contract is approved.

(e2) Of the one-half of one percent (0.5%) of the amount appropriated for the construction cost of a State building that is dedicated to the acquisition of works of art pursuant to subsection (a) of this section, two

percent (2%) shall be placed in a nonreverting fund for the repair and conservation of the works of art in the Art Works for State Buildings Collection in the Department of Cultural Resources.

(f) The Department of Cultural Resources may issue any rules necessary for the implementation of this ~~act~~ Article and shall administer the program created by this ~~act~~ Article through the North Carolina Arts Council."

(c) G.S. 143-408.5(a) reads as rewritten:

"(a) Whenever a new State building is to be constructed, the contracting officer, together with the designer who has been engaged to prepare the plans for the project, shall consult with the principal user and the Public Arts Administrator of the North Carolina Arts ~~Council~~ Council, prior to the schematic phase of the building, regarding the works of art to be included in the design of the building and the artist or craftsman to be commissioned for the project."

(d) This section applies to State buildings authorized after September 1, 1992.

Requested by: Representatives Crawford, Wainwright, Senator Plexico  
TRYON'S PALACE ARTIFACTS

Sec. 12.2. G.S. 121-20 reads as rewritten:

"§ 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's ~~Palace~~. Palace; Commission to acquire and sell artifacts for Tryon's Palace.

(a) In addition to exercising the powers and duties imposed upon the Tryon Palace Commission by Chapter 791 of the Session Laws of 1945 and Chapter 233 of the Session Laws of 1949, the Tryon Palace Commission is hereby fully authorized and empowered to receive and expend and disburse, for the restoration of the said Tryon's Palace, all such funds and property which were provided for said purpose by the last will and testament of Maude Moore Latham, deceased, and the said Commission shall likewise have the power and authority to receive and expend all such other funds as may be donated or made available for the purpose of restoring the said Palace or for the purpose of furnishing and equipping same and the grounds on which the same is located at New Bern, North Carolina.

The Tryon Palace Commission is hereby authorized, empowered and directed to designate some person as financial officer and treasurer, to disburse the funds and property devised by Maude Moore Latham to the said Tryon Palace Commission for the aforesaid purpose and all such other funds as may be donated or made available to the said Commission for expenditure for the aforesaid purposes. The said financial officer and treasurer shall be made the custodian of all stocks, bonds and securities and funds hereinbefore referred to and shall be authorized and empowered to sell, convert and transfer any stocks, bonds and securities held for such purpose, subject to and with the advice and approval of a finance committee to be appointed by the Tryon Palace Commission for such purpose. The sale and conversion and transfer of said securities shall be made when necessary to provide funds required for the said restoration and at such time as, in the opinion of the finance officer and treasurer, when approved by the finance committee, will be to the interests and advantage of the Tryon Palace



Commission and the purposes for which said funds and securities were provided.

The finance officer and treasurer aforesaid shall be required to give such bond as, in the opinion of the Tryon Palace Commission, is proper for the faithful performance as finance officer and treasurer, and shall render to the Tryon Palace Finance Committee, with copies to the Department of Cultural Resources and the State Treasurer, annual or ad interim detailed reports of moneys and/or securities received, exchanged or converted into cash. Checks issued against such funds shall be countersigned by the chairman of Tryon Palace Commission, or by one duly authorized by the said Commission.

The finance officer and treasurer shall serve without compensation; however, any expenses incurred for the faithful performance of said duties, including the cost of the bond, shall be borne by the Tryon Palace Commission, from the proceeds of the funds thus handled.

The Tryon Palace Commission shall have the power and authority in its discretion to call upon the Treasurer of the State of North Carolina to act as treasurer of the said funds and properties and, if so designated, said treasurer shall exercise all the powers and duties herein imposed upon the financial officer and treasurer hereinbefore referred to.

The Tryon Palace Commission is hereby authorized and empowered to expend the funds hereinbefore referred to and it may disburse said funds through the Department of Cultural Resources in the event it is found more practical to do so, and said Commission shall cooperate with the Department of Cultural Resources of the State of North Carolina in the expenditure of the funds for the restoration of said Tryon's Palace provided by two trust funds created by Maude Moore Latham in her lifetime, which funds shall be expended in accordance with the terms and provisions of said trusts for the purposes therein set out.

(b) The Tryon Palace Commission may solicit, accept, and hold artifacts and furnishings, and may acquire them by purchase or gift for the interpretive needs and development of Tryon Palace Historic Sites and Gardens. The Commission may dispose of by trade, sale, or transfer, in accordance with accepted museum practices, any accessioned or unaccessioned artifacts and furnishings in the custody of the Commission, or its appointed officers, that are determined to have no further value for official or administrative purposes or for research, reference, or interpretation. Any proceeds realized through the deaccession and sale of artifacts and furnishings shall be placed in a collections fund administered by the Tryon Palace Commission. Monies received by the Commission, after deduction of the expenses attributable to that sale, shall be used for the acquisition of artifacts and furnishings necessary or desirable for research, reference, and interpretation at Tryon Palace Historic Sites and Gardens."

Requested by: Representatives Crawford, Wainwright, Senator Plexico  
CULTURAL RESOURCES MAY SELL ARTIFACTS

Sec. 12.3. G.S. 121-7(a) reads as rewritten:

"(a) The Department of Cultural Resources shall maintain and administer the North Carolina Museum of History for the collection, preservation,

study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on permanent loan any artifact owned by the State of North Carolina and in the custody of and curated by the Division of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited to the State treasury to the credit of the Division of Archives and History Artifact Fund, and shall be used only for the purchase of other artifacts. No artifact curated by any agency of the Department of Cultural Resources may be pledged or mortgaged."

Requested by: Representatives Crawford, Wainwright, Hensley, Senator Plexico

#### CULTURAL RESOURCES SECURITY OFFICERS

**Sec. 12.4.** Section 34 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 34. (a) On July 1, 1994, the Department of Cultural Resources shall redefine the job responsibilities of its security ~~positions~~ positions, with the exception of the security positions for the North Carolina Museum of Art, so that the services of a certified law enforcement officer are no longer required, and shall accordingly discontinue payments to the Law Enforcement Officers' Retirement System.

(b) The Department of Cultural Resources in cooperation with the Department of Administration shall develop a plan to transfer by July 1, 1995, the security positions now under the North Carolina Museum of Art, Department of Cultural Resources, to the State Capitol Police, Department of Administration. The Department of Cultural Resources and the Department of Administration shall submit the plan to the General Assembly by March 1, 1995. The plan shall include all of the following:

- (1) An evaluation of the security technology currently installed in the North Carolina Museum of Art and recommendations regarding any additional equipment that may be needed to ensure adequate security for the Museum.
- (2) The establishment of a State Capitol Police substation or its equivalent in close proximity to State facilities located on Reedy Creek Road or Blue Ridge Road so that adequate security shall be provided to State property in that vicinity.

- (3) An agreement from the North Carolina Museum of Art to make available to the State Capitol Police any special training needed by officers deployed to provide security at the Museum.
- (4) A detailed cost proposal for the plan."

Requested by: Senators Daniel, Plyler

#### CREATION OF ROANOKE ISLAND COMMISSION

Sec. 12.5 (a) Article 2 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 27A. Roanoke Island Commission.

"§ 143B-131.1. Commission established.

There is established the Roanoke Island Commission. The Commission shall be located within the Department of Cultural Resources for organizational, budgetary, and administrative purposes.

"§ 143B-131.2. Roanoke Island Commission. -- Powers and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island.

The Commission may:

- (1) Advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance and aesthetic quality of U.S. Highway 64/264 and N.C. 400 travel corridors on Roanoke Island.
- (2) Advise the Secretary of the Department of Cultural Resources and adopt rules on matters pertinent to the operation and maintenance of the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.
- (3) Advise the Secretary of the Department of Cultural Resources and adopt rules on matters pertinent to the development of Ice Plant Island and to manage future facilities in cooperation with the Department of Cultural Resources.
- (4) Advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.
- (5) With the assistance of the Department of Cultural Resources, identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and Department rules.
- (6) Make recommendations to the Secretary of the Department of Cultural Resources for establishing and providing a proper charge for admission to the ship, and for the maintenance and operation of the ship, the visitor center, and the grounds as a permanent memorial and exhibit.
- (7) Solicit and accept gifts, grants, and donations.
- (8) Cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the

Secretary and Department of Environment, Health, and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.

- (9) Adopt and enforce such bylaws, rules, regulations, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties.
- (10) Establish and maintain a 'Roanoke Island Commission Fund' composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may establish a reserve fund to be maintained and used for contingencies and emergencies.
- (11) By cooperative arrangement with other agencies, groups, individuals, and other entities, coordinate and schedule historical and cultural events on Roanoke Island.
- (12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.
- (13) Acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(b) Contract Authority. -- The Commission may procure supplies, services, and property as appropriate and may enter into contracts, leases, or other legal agreements consistent with State laws and Department rules to carry out the purposes of this Part and duties of the Commission.

"§ 143B-131.3. Assignment of property; offices.

Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Part. Assignments under this section shall be without reimbursement by the Commission to the agency from which the assignment was made.

"§ 143B-131.4. Commission reports.

Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for development and promotion of the Elizabeth II State Historic Site and Visitor Center. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly. The report shall include:

- (1) A summary of actions taken by the Commission consistent with the powers and duties of the Commission set forth in G.S. 143B-131.2.
- (2) Recommendations for legislation and administrative action to promote and develop the Elizabeth II State Historic Site and Visitor Center.
- (3) An accounting of funds received and expended.

"§ 143B-131.5. Roanoke Island Commission. -- Additional powers and duties; transfer of assets and liabilities.

(a) The Commission shall also have the powers and duties established by Chapter 1194, Session Laws of 1981, as amended.



(b) Effective October 1, 1994, all lawful standards, rules, regulations, guidelines, contracts, agreements, permits, bylaws, and certificates of appropriateness of or issued by the Roanoke Voyages Corridor Commission or the Roanoke Voyages and Elizabeth II Commission shall remain in effect until modified, amended, revoked, repealed, or changed (as appropriate) by the Roanoke Island Commission in accordance with law.

(c) Effective October 1, 1994, all the assets and liabilities of the Roanoke Voyages and Elizabeth II Commission are vested in the Roanoke Island Commission.

"§ 143B-131.6. Roanoke Island Commission. -- Members; terms; vacancies; expenses; officers.

(a) The Commission shall consist of 24 voting members appointed as follows:

- (1) Six members appointed by the Governor;
- (2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, at least two of whom reside in Dare County;
- (3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least two of whom reside in Dare County; and
- (4) The following persons, or their designees, ex officio:
  - a. The Governor;
  - b. The Attorney General;
  - c. The Secretary of the Department of Cultural Resources;
  - d. The Secretary of the Department of Transportation;
  - e. The Chair of the Dare County Board of Commissioners; and
  - f. The Mayor of Manteo.

(b) Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

- (1) The Governor shall initially appoint three members for a term of two years and three members for a term of three years.
- (2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint three members for a term of two years and three members for a term of three years.
- (3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint three members for a term of two years and three members for a term of three years.

Initial terms shall commence on October 1, 1994.

(c) The Governor shall appoint a chair biennially from among the membership of the Commission. The initial term of the chair shall commence on October 1, 1994. The Commission shall elect from its membership a vice-chair, a secretary, and treasurer to serve two-year terms. The Commission in its discretion may appoint a historian to serve at its pleasure. Initial terms shall commence on October 1, 1994.

(d) A vacancy in the Commission resulting from the resignation of a member or otherwise, shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the



unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(f) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Part.

(g) The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than two times a year.

(h) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(i) The Commission shall make its recommendations by September 15 of each year that terms expire for appointments for terms commencing November 1 of that year; provided the initial appointments for terms commencing October 1, 1994, shall be made upon recommendation of the Roanoke Island Historical Association.

"§ 143B-131.7. Roanoke Island Commission. -- Counsel.

The Attorney General shall assign legal counsel to the Commission."

(b) Sections 3.2 and 3.3 of Chapter 673, Session Laws of 1985, are amended by deleting "Section 2", and substituting "Section 3".

(c) Effective October 1, 1994, Part 27 of Article 2 of Chapter 143B of the General Statutes is repealed.

(d) Effective October 1, 1994, the statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission.

All its prescribed powers, including, but not limited to, rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred as well.

(e) This section becomes effective October 1, 1994.

## PART 13. OFFICE OF THE GOVERNOR

Requested by: Senators Martin of Guilford, Plexico, Representatives Crawford, Wainwright

### REPORT TO AUDITOR ON TRANSFERS BETWEEN OBJECTS AND ITEMS

**Sec. 13.** G.S. 143-23(a1) reads as rewritten:

"(a1) No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or

other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:

- (1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;
- (2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;
- (3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;
- (4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
- (5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental ~~Operations and to Operations~~, the Fiscal Research Division of the Legislative Services ~~Office Office~~, and the State Auditor the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure.

Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for (i) salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, contracted personal services, moving expenses, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments; or (ii) uses for which over expenditures are permitted by subdivisions (3), (4), and (5) of this subsection but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental ~~Operations and to Operations~~, the Fiscal Research Division of the Legislative Services ~~Office. Office~~, Office, and the State Auditor.

Lapsed salary funds that become available from vacant positions are also subject to the limitation that they may not be used for new permanent employee positions or to raise the salary of existing employees.

The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations and the State Auditor shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund.

The State Auditor shall review the report received from the Director of the Budget to ensure that the transfer complied with the intent and the provisions of this Article and shall report the Auditor's findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division."

## PART 14. DEPARTMENT OF INSURANCE

Requested by: Senator Plexico, Representatives Crawford, Wainwright  
 CONTROLLER'S RECOMMENDATIONS/INSURANCE  
 DEPARTMENT'S CHART OF ACCOUNTS

**Sec. 14.** The Office of the State Controller performed a review of the Department of Insurance's chart of accounts in accordance with Section 42 of Chapter 321 of the 1993 Session Laws and reported its findings and recommendations in a letter dated March 1, 1994, to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Office of the State Controller made several recommendations to bring the Department's accounting practices in compliance with standards promulgated by the Governmental Accounting Standards Board (GASB) and to be consistent with the accounting principles and guidelines prescribed for use within the State's accounting system. The Department of Insurance and the Office of State Budget and Management under the supervision of the Office of the State Controller shall implement the first three recommendations of the Office of the State Controller with regard to the following:

- (1) Governmental Accounting Standards Board Classifications. -- The Office of State Budget and Management and the Department of Insurance shall establish two special revenue budget codes, interest bearing and noninterest bearing, to be on deposit with the State Treasurer. The following list of funds within budget code number 63900 shall be recorded in an interest bearing special revenue budget code:

<u>Fund</u>	<u>Title</u>	<u>GASB</u> <u>No.</u>	<u>Reassigned</u> <u>GASB No.</u>
6112	Safety Grants Program	3100	1319
6123	Volunteer Rescue/EMS	3100	1319
6133	Volunteer Fire Dept.	3100	1319
6134	Special Training Schools	3900	1300
6135	Fire and Rescue Journals	3900	1319
6140	Fire Prevention Week	3900	1319
6501	Qualification Board Fund	3900	1319

The following list of funds within budget code number 63901 shall be recorded in a noninterest bearing special revenue fund:

<u>Fund</u>	<u>Title</u>	<u>GASB</u> <u>No.</u>	<u>Reassigned</u> <u>GASB No.</u>
6121	NC Firemen's Assoc. Grant	3100	1319
6122	Res. Squad Workers Relief	3100	1319

- (2) Incorrect Budget Code. -- The Department of Insurance Fund (DAS Fund 6000) and the Consumer Protection Fund (DAS Fund 6001) shall be accounted for in an interest bearing special revenue budget code. The Continuing Education Program (DAS Fund 6231) shall be accounted for in a noninterest bearing special

revenue budget code. The funds are being recorded as a special revenue fund for financial reporting purposes.

- (3) Classification of Divisions Currently Accounted for in Trust Funds. -- The revenue for the field audit division (DAS fund 6222), market conduct division (DAS fund 6223), and regulatory actions division (DAS fund 6226) of the Department of Insurance shall be recorded in the General Fund as receipts of the Department rather than in trust funds from which transfers are periodically made to the General Fund.

Requested by: Senator Martin of Guilford, Representatives Crawford, Nesbitt

#### CONSUMER PROTECTION FUND

Sec. 14.1. G.S. 58-2-215(d) reads as rewritten:

"(d) In no event shall more than ~~fifty percent (50%)~~ seventy percent (70%) of the amount in the Fund be allocated or spent for any one purpose specified in subsection (b) of this section in any fiscal year."

Requested by: Senators Plyler, Plexico, Representatives Wainwright, Crawford

#### PROVIDE STAFF POSITIONS TO ADMINISTER FIRE AND RESCUE CERTIFICATION PROGRAMS

Sec. 14.2. The North Carolina Fire and Rescue Commission is authorized four staff positions to administer fire and rescue certification programs. Of the four positions, three shall be field positions and one shall be clerical. The positions shall be funded by the Department of Insurance Fund and shall become part of the Commission's continuation budget.

#### PART 15. DEPARTMENT OF REVENUE

Requested by: Senator Plexico, Representatives Wainwright, Crawford  
STATE CONTROLLER REVIEW OF REVENUE CHART OF ACCOUNTS

Sec. 15. The Office of the State Controller as authorized by G.S. 143B-426.39 and this section shall review the chart of accounts used by the Department of Revenue and shall report to the 1995 General Assembly and to the Department of Revenue by March 1, 1995, the findings and recommendations of the State Controller's office regarding changes needed to align the accounting practices in the Department of Revenue with standards of the Government Accounting Standards Board and generally accepted principles of governmental accounting used within the State's accounting system.

Requested by: Representatives Crawford, Wainwright, Senator Plexico  
REIMBURSEMENT FOR COST OF COLLECTING WHITE GOODS TAX

Sec. 15.1. (a) Section 10 of Chapter 471 of the 1993 Session Laws is repealed.

(b) Section 11 of Chapter 471 of the 1993 Session Laws reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. Section 3 of this act expires July 1, 1998. Section 6 of this act becomes effective July 1, 1998. Sections 7, 8, and 9 of this act become effective July 1, 1999. ~~Section 10 of this act becomes effective January 1, 1995.~~

The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect. The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

#### PART 15A. OFFICE OF THE STATE AUDITOR

Requested by: Senator Plexico, Representatives Wainwright, Crawford  
COST ANALYSIS OF BROADBAND TELECOMMUNICATIONS

**Sec. 15A.** The State Auditor shall conduct a comprehensive analysis to determine costs of applying broadband telecommunications technology to: public schools, community colleges, universities, hospitals, State agencies and other State-owned institutions. Issues to be addressed during the study shall include the following:

- (1) The costs to the State of using this technology including the following: hardware and software contracts; consultant, service, and communication provider contracts; and executed site plan commitments (Documents of Understanding).
- (2) The projected costs to the State of using this technology including the following: projected hardware and software costs for all sites; projected costs of consultant, service, and communication provider services; projected personnel and equipment costs associated with the use of broadband technology at all sites including State Information Processing Services in the Office of the State Controller and also the MCNC.
- (3) Any other issues relating to broadband technology and the State's use of this technology that the Office of the State Auditor, in the exercise of its discretion, deems necessary or advisable.

All State agencies and officials shall cooperate fully with the Office of the State Auditor in its performance of this study. This includes providing ready and complete access to all materials, including those in draft form and those that may contain confidential, proprietary, or similar information. It is the intent of the General Assembly that the Office of the State Auditor have the same independence in conducting this study as is provided by G.S. 147-64.8 for an audit.

#### PART 16. STATE BOARD OF ELECTIONS

Requested by: Senator Plexico, Representatives Crawford, Wainwright  
STATE BOARD OF ELECTIONS NEEDS ASSESSMENT



**Sec. 16. (a)** The State Board of Elections shall conduct a needs assessment and requirements analysis for computerized voter registration. The needs assessment shall determine whether there is a need for additional computerization of voter registration on a statewide basis, on the county level, or both. The requirements analysis shall prepare specifications for the additional computerization, if any, that the needs assessment determines is needed. Those specifications shall include, but not necessarily be limited to, functional requirements, performance requirements, interface requirements with other computer applications, data communications requirements, computer application design requirements, and project development standards.

The State Board of Elections shall use an outside consultant, procured through the Department of Administration, Division of Purchase and Contract, to conduct the needs assessment and requirements analysis. In requests for bids, requests for quotes, requests for proposals, or other procurement actions issued through the Department of Administration, Division of Purchase and Contract, or through any other State agency, for a consultant to write these specifications there shall be a provision that reads as follows:

"Eligibility for Future Requirements: The successful offeror on this project will not be considered for an award on subsequent hardware, software, software support, and related procurements which are based on specifications or recommendations resulting from this procurement."

The Division of Purchase and Contract and the State agency or agencies involved in the procurement may delete this provision in a procurement request by jointly:

- (1) Filing a written request with the Director of the Budget for authorization to delete this provision from the procurement effort,
- (2) Sending a copy of this written request for authorization to the Director of the Fiscal Research Division at the time it is filed with the Office of State Budget and Management,
- (3) Receiving written authorization to delete the provision from the Director of the Budget, and
- (4) Reporting the authorization, if it is granted, to the Director of the Fiscal Research Division and to the next meeting of the Joint Legislative Commission on Governmental Operations.

(b) Of the funds appropriated in this act to the State Board of Elections the sum of one million five hundred thousand dollars (\$1,500,000) for fiscal year 1994-95 shall be deposited into a reserve fund for computerized voter registration. The State Board of Elections may spend money from the reserve fund only after the following conditions have been met:

- (1) A needs assessment and requirements analysis has been conducted in accordance with subsection (a) of this section and has recommended that investments be made in computerized voter registration, and that the State Board of Elections has developed a specific proposal for computerization in accordance with the recommendations of that needs assessment and requirements analysis.

- (2) The specific proposal developed with the State Board of Elections in accordance with subdivision (1) of this subsection has been approved by the Information Resource Management Commission.
- (3) After the conditions of subdivisions (1) and (2) of this subsection have been met, the State Board of Elections has reported its specific plans for computerized voter registration to the Joint Legislative Commission on Governmental Operations.

After the conditions in subdivisions (1) through (3) of this subsection have been met, the State Board of Elections may spend money from the fund created by this subsection, but only for a computerization plan that has met those three conditions.

(c) To the extent that this section conflicts with G.S. 163-82.11, G.S. 163-82.12, or G.S. 163-82.13, as enacted by Chapter 762 of the 1993 Session Laws, this section prevails to the extent of the conflict.

Requested by: Representatives Nesbitt, Diamont, Senators Daniel, Plyler  
**VOTER REGISTRATION EXPENSES/ESC/IMPLEMENT NVRA**

**Sec. 16.1.** (a) Upon request of the Employment Security Commission, the State Budget Officer shall conduct a workload analysis of that agency's expected and actual voter registration activity related to compliance with Article 7A of Chapter 163 of the General Statutes as enacted by Chapter 762 of the 1993 Session Laws, or compliance with P.L. 103-31, and shall report the results of that study to the Director of the Budget, the appropriate Subcommittees of the House of Representatives' Appropriations Committee and the Senate Appropriations Committee, and the Fiscal Research Division of the General Assembly by April 1, 1995, except that the report on expected activity shall be made by December 1, 1994.

(b) The Chairman of the Employment Security Commission, following the provisions in subsection (a) of this section regarding expected agency workload analysis, may submit a nonrecurring funding request to the Director of the Budget for funds from interest accrued in the Worker Training Trust Fund to offset costs of compliance with Article 7A of Chapter 160A of the General Statutes as enacted by Chapter 762 of the 1993 Session Laws, or compliance with P.L. 103-31. Such funds may be used only if federal funds are unavailable or insufficient.

Requested by: Representatives Michaux, Diamont, Nesbitt, Senators Daniel, Plyler

**VOTER REGISTRATION GRANTS TO COUNTIES/IMPLEMENT NVRA**

**Sec. 16.2.** (a) Funds appropriated in the Reserve for Voter Registration in this act shall be administered by the State Board of Elections, in collaboration with the Office of State Budget and Management and the State Data Center, through a one-time Grant-in-Aid program to counties. For the purposes of implementing this grant program, the State Board of Elections is designated the lead agency. Every county board of elections in North Carolina shall be eligible for a Grant-In-Aid from that reserve for voter registration activity.

(b) Counties may use grant funds to offset costs associated with compliance with Article 7A of Chapter 160A of the General Statutes as

enacted by Chapter 762 of the 1993 Session Laws, or with P.L. 103-31 (The National Voter Registration Act of 1993).

(c) Subdivisions of State agencies are not eligible for these grants-in-aid. A county may, however, make grant funds received under this section available to voter registration agencies under G.S. 163-82.20(a)(1) or G.S. 163-82.20(a)(2), as enacted by Chapter 762 of the 1993 Session Laws, serving that county. Upon request of affected State agencies, the State Budget Officer shall conduct a workload analysis of an agency's voter registration activity related to compliance with Article 7A of Chapter 163 of the General Statutes as enacted by Chapter 762 of the 1993 Session Laws, or compliance with P.L. 103-31, and shall report the results of that study to the Director of the Budget, the appropriate Subcommittees of the House of Representatives Appropriations Committee and the Senate Appropriations Committee, and the Fiscal Research Division of the General Assembly by April 1, 1995.

(d) The State Board of Elections, together with the Office of State Budget and Management, and the State Data Center in the Office of Policy and Planning in The Office of the Governor shall develop and issue rules related to a grant process for grant applications and grant awards to counties. The rules shall be developed and issued no later than September 15, 1994. County Grants-in-Aid to boards of county commissioners shall be awarded no later than October 31, 1994.

(e) Criteria for the amount of grant awards shall include county population, the unregistered, eligible, voting-age population, current registration activity, and a brief implementation plan, reported by the county in the grant application. No county grant shall be less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000).

(f) The State Board of Elections shall be responsible for certifying as to the accuracy of actual *bona fide* voter registrations reported in each county application. Upon written notification from the State Board of Elections, the Office of State Budget and Management shall issue the grant award to the county.

## PART 17. COLLEGES AND UNIVERSITIES

Requested by: Senator Ward, Representatives Black, Rogers  
AID TO STUDENTS ATTENDING PRIVATE COLLEGES/ PROCEDURE

Sec. 17. Subsections (a) and (b) of Section 80 of Chapter 321 of the 1993 Session Laws read as rewritten:

"Sec. 80. (a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, G.S. 116-21, and G.S. 116-22. These funds shall provide up to ~~four hundred fifty dollars (\$450.00)~~ five hundred fifty dollars (\$550.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 of each fiscal year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students

during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be made available for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19, and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum not to exceed ~~one thousand one hundred fifty dollars (\$1,150)~~ one thousand two hundred fifty dollars (\$1,250) per academic year, which shall be distributed to the student as hereinafter provided.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit, at such times as it shall prescribe, the grant to the approved institution on behalf and to the credit of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of October 1 of the first academic term or on the tenth classroom day following the beginning of the second school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and
- (2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund."

Requested by: Senator Ward, Representatives Black, Rogers  
AGRICULTURAL PROGRAMS

**Sec. 17.1.** Of the funds appropriated in this act to the Board of Governors of The University of North Carolina, four hundred fifty thousand dollars (\$450,000) shall be allocated for matching federal funds and enhancement of the agricultural research and extension programs at North Carolina Agricultural and Technical State University.

North Carolina Agricultural and Technical State University and North Carolina State University shall establish a joint committee to coordinate the efforts of the two campuses in agricultural research and extension and to avoid duplication of efforts.

Requested by: Senator Daniel, Representatives Black, Rogers, Fussell  
NURSE ANESTHETIST TRAINING FUNDS

Sec. 17.2. Section 98 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 98. Of the funds appropriated to the Board of Governors of The University of North Carolina in this act, the sum of fifty thousand dollars (\$50,000) for the 1993-94 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 1994-95 fiscal year shall be used for the Area Health Education Center program to contract with the Raleigh School of Nurse Anesthesia for training of certified, registered nurse anesthetists."

Requested by: Senators Ward, Perdue, Representatives Sutton, Black, Rogers, Barnes

INCENTIVE SCHOLARSHIP PROGRAM FOR NATIVE AMERICANS

Sec. 17.3. (a) The Board of Governors of The University of North Carolina shall establish the Incentive Scholarship Program for Native Americans to provide opportunities for Native Americans who are residents of North Carolina to attend constituent institutions of The University of North Carolina under rules adopted by the Board of Governors. Scholarships awarded under the program shall carry a maximum value of three thousand dollars (\$3,000) per recipient per academic year, reduced by any amount of need-based aid that the recipient may receive from Pell Grants, North Carolina Student Incentive Grants, Supplemental Educational Opportunity Grants, or the American Indian Student Legislative Grant Program. To be eligible for such a scholarship, a student shall be a Native American, defined as an individual who maintains cultural identification as a Native American through membership in an Indian tribe recognized by the United States or by the State of North Carolina or through other tribal affiliation or community recognition.

(b) The Board of Governors of The University of North Carolina shall provide for the orderly transition of the American Indian Legislative Scholarship Program into the Incentive Scholarship Program for Native Americans, incorporating the purposes of both programs into a single administrative entity.

(c) Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1994-95 fiscal year in this act, three hundred ninety thousand dollars (\$390,000) shall be used to underwrite the cost of awarding scholarships for the benefit of students enrolled in the 1994-95 academic year.

Requested by: Senators Ward, Perdue, Representatives Black, Rogers, Barnes

MINORITY PRESENCE GRANTS ELIGIBILITY



**Sec. 17.3A.** The Board of Governors of The University of North Carolina shall adopt policies that broaden the number of underrepresented groups eligible for Minority Presence Grants at each of the constituent institutions. Of the funds appropriated to the Board of Governors in this act, the sum of one hundred fifty thousand dollars (\$150,000) for the 1994-95 fiscal year shall be used for this purpose.

Requested by: Senators Ward, Perdue

**AGRICULTURAL AND AQUACULTURAL EXPORT MARKET DEVELOPMENT FUNDS**

**Sec. 17.4.** Of the funds appropriated in this act for enhancement of agricultural programs at North Carolina State University, seven hundred twenty thousand dollars (\$720,000) shall be used to further develop Cunningham Farm for enhancement of export market potential for agricultural and aquacultural products.

Requested by: Senator Ward

**UNC-CH SMITH CENTER FUNDS**

**Sec. 17.5.** Of the funds appropriated in this act to the University of North Carolina at Chapel Hill, the sum of four hundred thousand dollars (\$400,000) is included from nonrecurring funds to offset operating losses at the Smith Center. The University of North Carolina shall include these funds in its 1995-97 continuation budget request. The General Assembly recommends that the Director of the Budget include these funds in the 1995-97 budget recommended to the 1995 General Assembly.

Requested by: Senators Ward, Perdue, Lee, Representatives Black, Rogers, Barnes

**UNIVERSITY OF NORTH CAROLINA MANAGEMENT FLEXIBILITY**

**Sec. 17.6.** (a) Part 2A of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-30.6. Reports of results.

The Board of Governors shall report annually by March 31 of each year on its decisions and directives implementing this Part to the Joint Legislative Education Oversight Committee. In particular, the Board shall report on the impact on undergraduate student learning and development as demonstrated by the standard assessment measures established in the institutional effectiveness plans, fiscal savings, management initiatives, increased efficiency and effectiveness, and other outcomes made possible by the flexibility provided by this Part to the special responsibility constituent institutions. These reports shall include documentation of any reallocation of resources, the use of nonreverted appropriations, and any additional costs incurred."

(b) G.S. 143-53.1 reads as rewritten:

"§ 143-53.1. Setting of benchmarks; increase by Secretary.

On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52 with respect to competitive bid procedures and the bid value benchmark authorized by G.S. 143-53(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ten thousand

dollars (\$10,000); provided, the Secretary of Administration may, in his discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~twenty-five thousand dollars (\$25,000) on and after July 1, 1991, thirty-five thousand dollars (\$35,000).~~"

(c) G.S. 116-30.2 reads as rewritten:

"§ 116-30.2. *Appropriations to special responsibility constituent institutions.*

All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 143-23(a3), each special responsibility constituent institution may expend the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S.143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions."

(d) The Director of the Budget shall adjust each special responsibility constituent institution's historic reversion percentage established pursuant to G.S. 116-30.3 for the 1994-95 fiscal year to account for fifty percent (50%) of the funds reduced as part of the overall ten million dollar (\$10,000,000) reduction in vacant positions in this act.

(e) This subsection and subsection (c) of this section are effective upon ratification. Subsections (a) and (b) of this section become effective July 1, 1994.

Requested by: Senators Ward, Perdue, Representatives Black, Rogers, Barnes, Redwine

SEA GRANT COLLEGE PROGRAM FOR FISHERIES  
OCEANOGRAPHY STUDY

Sec. 17.7. (a) Of the funds appropriated in this act to the Board of Governors of The University of North Carolina, the sum of two hundred twenty-five thousand dollars (\$225,000) for the 1994-95 fiscal year shall be used for the North Carolina Sea Grant College Program to study the fisheries resource and management structure. These funds may be used for personnel, administrative, and consulting costs.

(b) Section 6 of Chapter 576 of the 1993 Session Laws, as amended, reads as rewritten:

"Sec. 6. Nothing herein contained shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. If funds are not appropriated for the 1994-95 fiscal year to implement the provisions of Sections 3, 4, or 5 of this act, Sections 3, 4, or 5 shall not become effective. The suspension of the sale of licenses subject to the moratorium in Section 3 of Chapter 576 of this act by the Division of Marine Fisheries beginning on July 1, 1994, is retroactively authorized. License applications which were received but not processed during the suspension shall be determined in accordance with the provisions of Section 3 of this act if the funds are appropriated for the 1994-95 fiscal year to implement Section 3 of this act. If no funds are appropriated for the 1994-95 fiscal year to implement Section 3 of this act, then Section 3 of this act shall not become effective and license applications received but not processed during the suspension shall be determined in accordance with the provisions of Article 14 of Chapter 113 of the General Statutes."

Requested by: Representatives Black, Rogers, Nesbitt, Barnes, Senators Daniel, Ward, Perdue

#### NCSU COMPETITIVE INDUSTRIES/FUNDS

Sec. 17.8. (a) Of the funds appropriated to the Board of Governors of The University of North Carolina in Section 3 of this act, the sum of one million three hundred sixty thousand dollars (\$1,360,000) shall be allocated to North Carolina State University at Raleigh to enhance efforts to assure the competitiveness of several traditional industries. The funds shall be allocated to provide:

- (1) \$200,000 to transfer the Agricultural Education Program to the College of Agriculture and Life Sciences;
- (2) \$500,000 for extension, research, and support of the furniture industry;
- (3) \$360,000 for enhancement of pulp and paper technology efforts; and
- (4) \$300,000 for the Nonwovens Cooperative Research Center.

(b) Effective July 1, 1994, Section 81 of Chapter 321 of the 1993 Session Laws is repealed.

Requested by: Representatives Black, Rogers, Barnes, Senators Ward, Perdue

#### TEACHING IMPROVEMENT FUNDS

Sec. 17.9. (a) Of the funds appropriated to the Board of Governors of The University of North Carolina in this act for the schedule of priorities, three million six hundred sixty thousand seven hundred dollars (\$3,660,700) shall be used for the 1994-95 fiscal year to reduce the average student-faculty ratio at all constituent institutions of The University of North Carolina to no more than 16 to 1 beginning with the 1994-95 academic year.

(b) The Board of Governors of The University of North Carolina shall adopt the rules necessary to implement this section.

Requested by: Representatives Black, Rogers, Oldham, Senators Ward, Perdue

#### UNC TUITION SURCHARGE EXCEPTION

**Sec. 17.10.** Subsection (b) of Section 89 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(b) The Board of Governors of The University of North Carolina shall ensure that procedures are established that are necessary to impose a twenty-five percent (25%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. The calculation of these credit hours taken at a constituent institution or accepted for transfer shall exclude hours earned through the College Board's Advanced Placement or CLEP examinations, through institutional advanced placement or course validation, or through summer term or extension programs. No surcharge shall be imposed on any student who exceeds the degree credit hour limits within the equivalent of four academic years of regular term enrollment, or within five academic years of regular term enrollment in a degree program officially designated by the Board of Governors as a five-year program. The Board shall report to the Joint Legislative Education Oversight Committee by April 1, 1994, on its recommendations for implementing this surcharge."

Requested by: Representatives Black, Rogers, Nesbitt, Barnes, Senators Ward, Perdue

#### NURSING SCHOLARS PROGRAM

**Sec. 17.11.** (a) G.S. 90-171.61(b) reads as rewritten:

"(b) The Nursing Scholars Program shall be used to provide the following:

- (1) A four-year scholarship loan in the amount of five thousand dollars (\$5,000) per year, per recipient, to North Carolina high school seniors or other persons interested in preparing to become a registered nurse through a baccalaureate degree program.
- (2) A two-year scholarship loan in the amount of three thousand dollars (\$3,000) per year, per recipient, to persons interested in preparing to be a registered nurse through an associate degree nursing program or a diploma nursing program.
- (3) A two-year scholarship loan in the amount of three thousand dollars (\$3,000) per year, per recipient, for two years of baccalaureate nursing study for college juniors or community college graduates interested in preparing to be a registered nurse.
- (4) A two-year scholarship loan of three thousand dollars (\$3,000) per year, per recipient, for two years of baccalaureate study in nursing for registered nurses who do not hold a baccalaureate degree in nursing.
- (5) A two-year scholarship loan of six thousand dollars (\$6,000) per year, per recipient, for two years of study leading to a master of

science in nursing degree for people already holding a baccalaureate degree in nursing.

In addition to the scholarship loans awarded pursuant to subdivisions (1) through (5) of this subsection, the Commission may award pro rata scholarship loans to recipients enrolled at least half-time in study leading to a master of science in nursing degree who already hold a baccalaureate degree in nursing. In awarding all scholarship loans, the Commission shall give priority to full-time students over part-time students. The State Education Assistance Authority shall adopt specific rules to regulate scholarship loans to part-time master of science in nursing students.

Within current funds available or with any additional funds provided by the General Assembly for this purpose, the Commission may set aside slots for scholarship loans prescribed by subdivisions (1) and (2) of this subsection to enable licensed practical nurses to become registered nurses. The State Education Assistance Authority shall adopt specific rules to regulate these scholarship loans."

(b) G.S. 90-171.62(b) reads as rewritten:

"(b) The State Education Assistance Authority shall forgive the loan if, within seven years after graduation from a nursing education program, the recipient practices nursing in North Carolina for one year for every year a scholarship loan was provided. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within ten years. The Authority may provide for accelerated repayment and for less than full-time employment options to encourage the practice of nursing in either geographic or nursing specialty shortage areas. The Authority shall adopt specific rules to designate these geographic areas and these nursing specialty shortage areas, upon recommendations of the North Carolina Center for Nursing. The North Carolina Center for Nursing shall base its recommendations on objective information provided by interested groups or agencies and upon objective information collected by the Center. The Authority may forgive the scholarship loan if it determines that it is impossible for the recipient to practice nursing in North Carolina for a sufficient time to repay the loan because of the death or permanent disability of the recipient within ten years following graduation or termination of enrollment in a nursing education program."

(c) Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1994-95 fiscal year in this act, twenty-four thousand dollars (\$24,000) shall be used to fund a secretary position to administer the selection and origination functions for the Nursing Scholars Program and the Nurse Education Scholarship Loan Program.

Requested by: Representatives Black, Rogers, James, Barnes, Senators Ward, Perdue

#### SOIL SCIENCE FACULTY POSITION

**Sec. 17.12.** Of the funds appropriated to the Board of Governors of The University of North Carolina for agricultural programs for the 1994-95 fiscal year in this act, one hundred thousand dollars (\$100,000) shall be allocated to fund a new faculty position in soil science for the College of Agriculture and Life Sciences at North Carolina State University. The



position shall be located at the Tidewater Research and Extension Center at Plymouth, North Carolina.

Requested by: Representatives Black, Rogers, Nesbitt, Diamont, Barnes, Thompson

#### **MOUNTAIN CONIFER FUNDS**

**Sec. 17.13.** (a) The General Assembly finds that the growth of conifers for the Christmas tree industry is a major industry in Western North Carolina and that the sale of Christmas trees grown in Western North Carolina contributes seventy million dollars (\$70,000,000) annually to the region's economy.

(b) Of the funds appropriated in this act to the Board of Governors of The University of North Carolina for the 1994-95 fiscal year, the sum of seventy thousand dollars (\$70,000) shall be used for the Cooperative Extension Service at North Carolina State University to establish an area extension specialist position located at the Mountain Horticultural Crops Research Station at Fletcher. This position shall provide support to North Carolina's mountain conifer and Christmas tree industries. The Cooperative Extension Service at North Carolina State University shall consult with representative groups of Christmas tree growers in all regions in developing guidelines for this position and in filling the position.

Requested by: Representatives Warner, Black, Rogers, Diamont, Nesbitt  
**UNC/LEGISLATIVE COLLEGE OPPORTUNITY ACT PILOT PROGRAM**

**Sec. 17.14.** Of the funds appropriated to the Board of Governors of The University of North Carolina in this act, eight hundred thousand dollars (\$800,000) shall be allocated equally among the 16 constituent institutions. The funds shall not revert and shall be placed in trust fund accounts, with the investment earnings to be used for this program as well.

The funds shall be used to establish a pilot Legislative College Opportunity Program to recruit new students to enroll in college in future years who might not be able to attend college without incentives. The program shall be based on guidelines and rules established by the Board of Governors. The Board shall consider the needs of socially and economically disadvantaged youth in developing the pilot program with a primary goal of improving the academic performance, high school graduation rates, college going rates, and college graduation rates of youth currently underperforming in these measures. The Board shall develop the pilot program so that it provides incentives for and removes financial barriers to college attendance. The Board shall consider various academic standards and financial need in establishing the program, and the funds shall be used to pay for some portion of college attendance costs.

The Board shall establish the program guidelines and charge the campuses with implementing the pilot program by January 31, 1995. The Board shall report on the guidelines, program design and progress in implementation to the Joint Legislative Education Oversight Committee by May 15, 1995, with copies to members of the House and Senate Appropriations Subcommittees on Education. The Board shall monitor the

success of the pilot program in attracting students who otherwise might not have enrolled in higher education, and shall monitor the progress of these students, with annual reports to the Joint Legislative Education Oversight Committee by May 15, 1996 and each succeeding year through 2001.

Requested by: Representatives Nesbitt, Diamont, Black, Rogers, Senators Ward, Perdue

#### CAMPUS STORES OPEN TO STUDENTS AT ALL CAMPUSES

Sec. 17.15. G.S. 66-58(c)(3) reads as rewritten:

"(3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of The University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina."

Requested by: Representatives Baddour, Black, Rogers, Barnes, Senators Ward, Perdue

#### SOCIAL WORKERS' EDUCATION LOAN FUND

Sec. 17.16. Effective July 1, 1994, Article 23 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-209.30. *Social Workers' Education Loan Fund.*

(a) There is established the Social Workers' Education Loan Fund to be administered by the State Education Assistance Authority, in consultation with the Department of Human Resources, to attract trained social workers into public child welfare positions in all county departments of social services in the State. The Fund shall provide 25 four-year undergraduate and 10 two-year graduate scholarship loans per year.

(b) The Authority, in consultation with the Department of Human Resources, shall develop the following criteria to administer the Fund:

- (1) All students shall be enrolled in an institution of higher education in North Carolina in an accredited bachelors of social work or masters of social work program;
  - (2) All students shall be residents of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1;
  - (3) All students shall enter into a legal agreement and promissory note with the Authority to accept employment in public child welfare in exchange for receiving any funds, which agreement shall include stipulation that the student agrees to accept employment in rural or other need-based counties; and
  - (4) Any additional criteria that the Authority considers necessary to administer the program effectively, including:
    - a. Consideration of the appropriate numbers of minority students and students from diverse socio-economic backgrounds to receive funds pursuant to this section;
    - b. Consideration of what rural or other need-based areas of the State shall be considered appropriate for work after graduation pursuant to subdivision (3) of this subsection;
    - c. Consideration of the academic qualifications of the individuals applying to receive funds; and
    - d. Consideration of the commitment the individuals applying to receive funds demonstrate to the profession of social work.
- (c) The Authority shall ensure that the loan amounts are limited as follows:
- (1) For a student pursuing a bachelors of social work degree, four thousand dollars (\$4,000) per year for a maximum of four years; and
  - (2) For a student pursuing a masters of social work degree, five thousand dollars (\$5,000) per year for a maximum of two years.
- (d) The Authority shall ensure that the following loan cancellations and repayment schedules apply to all funds distributed pursuant to this section:
- (1) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who works for a public child welfare agency in a rural or other need-based area of North Carolina shall have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment shall cancel one academic year's loan, whether four thousand dollars (\$4,000) or five thousand dollars (\$5,000);
  - (2) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who works in public child welfare in a rural or other need-based area of North Carolina for the equivalent of the total number of academic years funds were received shall have the entire loan cancelled;
  - (3) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who does not work in public child welfare in a rural or other need-based area of North Carolina for any or all of the equivalent of the number of

years funds were received shall repay the loan to the Authority according to a schedule prescribed in the promissory note, plus ten percent (10%) annual interest; and

- (4) The individual who does not graduate with a bachelors of social work degree or a masters of social work degree shall repay the loan according to a schedule prescribed by the Authority, not to exceed fifteen percent (15%) annual interest. In establishing a schedule and interest rate, the Authority shall take into consideration the reasons the individual did not graduate with a bachelors of social work degree or a masters of social work degree.

The Authority shall ensure that all repayments, including accrued interest, shall be placed in the Fund.

The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(e) The State Education Assistance Authority, in consultation with the Department of Human Resources, shall adopt rules to implement the Social Workers' Education Loan Fund as described in this section."

Requested by: Representatives Diamont, Wilmoth, Cromer  
ASU CONVOCATION CENTER

**Sec. 17.17.** Of the funds appropriated in this act for the construction of the Convocation Center at Appalachian State University, up to three million five hundred thousand dollars (\$3,500,000) may be used to begin planning, design, and site-development for the Convocation Center project during the 1994-95 fiscal year.

Requested by: Senators Daniel, Kaplan  
NORTH CAROLINA SCHOOL OF THE ARTS FILM SCHOOL

**Sec. 17.18.** The one million eight hundred thousand dollars (\$1,800,000) in non-recurring funds appropriated to the North Carolina School of the Arts for the Film School shall be used to purchase equipment and for facility and other one-time and other start-up costs for the creation of a course of study in film production technology at the Piedmont Community College Satellite in Caswell County.

## PART 18. DEPARTMENT OF COMMUNITY COLLEGES

Requested by: Senators Ward, Perdue, Representatives Black, Rogers  
PROGRAM REGIONALISM

**Sec. 18.** The State Board of Community Colleges shall require that all new programs it approves be developed using a regional approach unless there are extreme extenuating circumstances documented by the college detailing reasons a regional program is not feasible. The college shall demonstrate that it has attempted to develop a regional program and explain what barriers were in existence.

It is the intent of the General Assembly to increase the number of regional program offerings in community colleges and to eliminate as much

duplication of programs by colleges that are within reasonably close proximity to each other. The General Assembly urges the State Board's Government Performance Audit Committee (GPAC) Task Force on Regionalism to provide more substantive recommendations on how existing as well as new programs can be offered regionally as recommended by the GPAC in its next report due in January 1995.

The Department of Community Colleges shall report quarterly to the Joint Legislative Education Oversight Committee on the progress made on regional programs. The report shall list all programs approved by the State Board that are not regional and the reasons for their approval.

Requested by: Senator Ward, Representatives Black, Rogers

#### CONTINUING BUDGET CONCEPT

**Sec. 18.1.** The State Board of Community Colleges shall implement the new continuing budget concept presented to the House and Senate Appropriations Subcommittees during the 1994 Regular Session of the 1993 General Assembly for the 1995-97 biennium and in subsequent years. In order to ensure more stability in funding, community colleges that experience a decline in enrollment shall not receive a decrease in full-time equivalent student (FTE) enrollment funds until their enrollment declines more than four percent (4%). At that time, they shall experience a decline of only the amount over four percent (4%). Community colleges that experience an increase in enrollment shall not experience an increase in full-time equivalent student (FTE) enrollment funds until their enrollment increases more than four percent (4%). At that time, they shall experience an increase of only the amount over four percent (4%).

It is the intent of this section to implement the recommendation of the Government Performance Audit Committee regarding changing the community college funding formula to one that is a combination of a base funding source with an FTE component.

In addition, the State Board of Community Colleges shall develop a program-based FTE cost model that will fund future FTEs in excess of the four percent (4%) growth on the basis of actual program cost as opposed to an overall average FTE cost. This plan shall be reported to the 1995 General Assembly.

Requested by: Senator Ward, Representatives Black, Rogers

#### STATE BOARD RESERVE FUNDS

**Sec. 18.2.** Of the funds appropriated to the Department of Community Colleges in Chapter 321 of the 1993 Session Laws for the State Board Reserve, forty-six thousand dollars (\$46,000) shall be allocated to fund the additional costs associated with the automated central cataloging of library books.

Notwithstanding G.S. 143-16.3, the State Board may use up to three hundred thousand dollars (\$300,000) from the State Board Reserve to fund the community colleges leadership development programs that were a part of the State Board's budget request to the 1994 Regular Session of the 1993 General Assembly.



Requested by: Senators Ward, Perdue, Representatives Black, Rogers, Barnes

#### PRISON CLASSES

**Sec. 18.4.** G.S. 115D-5 is amended by adding a new subsection to read:

"(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility."

Requested by: Representatives Diamont, Black, Rogers, Senators Ward, Perdue

#### COMMUNITY COLLEGES BEHIND WALLS

**Sec. 18.5.** The State Board of Community Colleges shall develop a plan to establish "Community Colleges Behind Walls" to train and educate prison inmates better. The State Board shall present the plan to the 1995 General Assembly prior to February 1, 1995.

Requested by: Representatives Nesbitt, Black, Rogers, Senators Ward, Perdue

#### COMPETITIVE SALARY LEVELS FOR CURRICULUM FACULTY

**Sec. 18.6.** (a) Funds appropriated in this act for competitive salary levels for community college curriculum faculty shall be used to provide an average additional salary increase to full-time curriculum faculty to enable the community colleges to retain a core of outstanding faculty at competitive salary levels. The State Board of Community Colleges shall not use these funds to change the faculty/student ratio in the funding formula for community colleges. The State Board shall use the competitive salary funds, along with the funds appropriated in this act for a 4% across-the-board salary increase for curriculum faculty, to increase the unit value for curriculum faculty in the community college allotment formula by 8%. The curriculum faculty salary unit value shall be \$37,000 for 1994-95, which is approximately 8% above the 1993-94 unit value.

The State Board of Community Colleges shall develop policies for the use of these funds that shall provide as near as practical for a system-wide community college curriculum faculty salary of 102% of the curriculum faculty salary unit value in the 1994-95 allotment formula.

Unless the average salary for full-time curriculum faculty at a college is at or above the 1994-95 unit value for curriculum faculty, the community college shall increase the average salary of full-time curriculum faculty members by at least 8% for the 1994-95 fiscal year. A community college shall not use curriculum faculty salary funds for administrative costs unless the average full-time curriculum faculty salary at the college is at or above the 1994-95 unit value for curriculum faculty.

(b) The State Board of Community Colleges shall submit to the General Assembly copies of the salary schedules applicable to community college faculty at each community college.

Requested by: Representatives Baddour, Black, Rogers, Senators Ward, Perdue

#### ESTABLISH GRANTS FOR VISITING ARTISTS' PROGRAM

**Sec. 18.7.** (a) Of the funds appropriated in Chapter 321 of the 1993 Session Laws to the Department of Community Colleges for the Community Services Block Grant Program for the 1994-95 fiscal year, five percent (5%) of those funds, which is the sum of ninety-five thousand eight hundred twenty dollars (\$95,820), shall be allocated to the Visiting Artists' Program. These funds shall be used as grants-in-aid to community colleges on a competitive basis in accordance with administrative guidelines approved by the State Board of Community Colleges. The purpose of the grants shall be to support and promote through the use of grants-in-aid, the Visiting Artists' Program, which is administered by the State Board of Community Colleges in cooperation with the North Carolina Arts Council. In addition the Department of Community Colleges may use their Community Services Block Grant funds to supplement the Visiting Artists' Program or other arts programs at the discretion of their local boards of community colleges.

(b) It is the intent of the General Assembly to preserve the Visiting Artists' Program in the Department of Community Colleges. The Department of Community Colleges shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division regarding its progress in making grants to community colleges for the Visiting Artists' Program.

#### PART 19. PUBLIC SCHOOLS

Requested by: Senators Ward, Perdue, Lee, Winner of Mecklenburg, Smith, Warren, Representatives Gray, Rogers, Black

#### NONCERTIFIED SCHOOL EMPLOYEE SALARIES

**Sec. 19.** (a) G.S. 115C-12(16) reads as rewritten:

"(16) Power with Regard to Salary Schedules. --

- a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.
- b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, ~~property and cost clerks~~, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

~~Prior to~~ By the end of the third payroll period of the 1995-96 school fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

~~The average salary paid to employees in each category from State-allotted funds for the 1993-94 school year shall be at least two percent (2%) higher than the average salary paid to employees in that category from State-allotted funds for the 1992-93 school year.~~

The State Board of Education shall report to the General Assembly, prior to ~~March 31, 1994, and~~ March 31, 1995, and March 31, 1996, on the implementation of this sub-subdivision.

- c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations."

(b) Beginning with the 1994-95 fiscal year, the State Board of Education shall allot salary funds for State-allotted school custodian positions on the basis of one thousand two hundred nine dollars (\$1,209) a month for each position plus any salary increment authorized for school custodians by the General Assembly.

Requested by: Senator Ward, Representatives Rogers, Black  
TRANSPORTATION INFORMATION MANAGEMENT SYSTEM  
FUNDS

**Sec. 19.1.** Of the funds appropriated to Aid to Local School Administrative Units for school transportation in this act, the sum of five hundred ten thousand dollars (\$510,000) for the 1994-95 fiscal year shall be used for the continuation of the Transportation Information Management System. These funds shall be used for equipment, equipment maintenance, and contractual services to operate the program.

It is the intent of the General Assembly to include these funds in the continuation budget for the 1995-97 fiscal biennium.

Requested by: Senator Ward, Representatives Rogers, Black  
**OUTCOME-BASED EDUCATION FUNDS**

**Sec. 19.2.** Of the funds appropriated for the Outcome-Based Education Program in this act, the sum of one hundred thousand dollars (\$100,000) shall be used by the Department of Public Instruction to provide technical assistance, evaluate programs, refine proficiencies and outcomes, and otherwise implement the program.

Requested by: Senator Ward, Representatives Black, Rogers  
**DEVELOPMENTAL DAY CENTERS' GRANT-IN-AID**

**Sec. 19.3.** Section 216 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 216. Of the funds appropriated in this act to the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of two million three hundred one thousand two hundred forty-eight dollars (\$2,301,248) for the 1993-94 fiscal year and the sum of two million three hundred one thousand two hundred forty-eight dollars (\$2,301,248) for the 1994-95 fiscal year are transferred to the Department of Public Instruction for handicapped children aged 3 through 4 years who have been identified through Division of Mental Health, Developmental Disabilities, and Substance Abuse Services statewide services and who are served in developmental day centers. These funds shall be used to contract with area mental health, developmental disabilities, and substance abuse authorities or with public or private nonprofit developmental day centers to continue to serve handicapped children aged 3 through 4 years who are identified as needing developmental day services.

It is the intent of the General Assembly to appropriate funds for this purpose in the continuation budget of the Department of Public Instruction for the 1995-97 fiscal biennium.

The Department of Public Instruction shall report to the General Assembly and to the Fiscal Research Division by May 1, 1994, and May 1, 1995, regarding the use of the funds transferred to it by this section."

Requested by: Senator Perdue, Representatives Rogers, Black  
**ADMINISTRATION OF THE INTERVENTION/PREVENTION GRANT PROGRAM**

**Sec. 19.4.** Of the funds allocated under Section 42 of Chapter 24 of the Session Laws of the 1994 Extra Session for the Intervention/Prevention Grant Program, up to two hundred thousand dollars (\$200,000) may be used by the Department of Public Instruction to implement that section.

Requested by: Senators Ward, Winner of Mecklenburg, Representatives Rogers, Black

#### LIMITED ENGLISH PROFICIENCY (LEP) STUDENTS

Sec. 19.5. (a) G.S. 115C-81(c) reads as rewritten:

"(c) Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the standard course of study, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, the dangers of harmful or illegal drugs, including alcohol, and cardiopulmonary resuscitation (CPR) and the Heimlich maneuver.

Local Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed."

(b) The State Board of Education shall study issues concerning Limited English Proficiency (LEP) students and shall develop a resource guide for local school administrative units that illustrates how to implement quality programs for LEP students. The study shall review:

- (1) Federal requirements for LEP students;
- (2) The number of LEP students in the State and their geographic distribution across the State;
- (3) Methods for identifying LEP students;
- (4) Methods for assessing the abilities of LEP students in their home language;
- (5) Criteria for entrance into and exit from LEP programs;
- (6) Technical assistance needs of local school administrative units and the Department of Public Instruction;
- (7) Teacher training needs for regular classroom teachers and teachers in LEP programs;
- (8) Projections of the number of English as a Second Language or other LEP teachers needed in the future and the role of The University of North Carolina in meeting that need;
- (9) Certification criteria for teachers of LEP students;
- (10) Methods for assessing LEP children's needs for special education, including programs for academically gifted students;
- (11) Methods of instruction for LEP students including English as a Second Language Programs and transitional bilingual education;
- (12) Funding options for serving LEP students, including use of federal Migrant Education funds and other federal, State, and local funds for LEP students; and
- (13) Programs in the State that currently serve LEP students.

The resource guide shall identify State and local funding sources for these programs, how to obtain these funds, and methods for program evaluation. The State Board shall provide a copy of the resource guide, the results of its study, and its recommendations regarding issues concerning LEP students, to the Joint Legislative Education Oversight Committee no later than December 1, 1994.



(c) If a local school administrative unit demonstrates that it has LEP students that it is unable to serve within the regular school allotments due to extraordinary circumstances, the State Board of Education may allocate funds from State Aid to Local School Administrative Units for the 1994-95 fiscal year to provide services to those students. No more than one million dollars (\$1,000,000) shall be allocated pursuant to this subsection for the 1994-95 fiscal year.

Requested by: Senator Ward, Representatives Rogers, Black  
**EXCEPTIONAL CHILDREN FUNDS**

**Sec. 19.5A.** (a) Section 134(a) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(a) The funds appropriated for exceptional children in this act shall be allocated as follows:

- (1) Each local school administrative unit shall receive for academically gifted children the sum of ~~\$641.26~~ \$652.17 per child for three and nine-tenths percent (3.9%) of the ~~1992-93~~ 1993-94 actual average daily membership in the local school administrative unit, regardless of the number of children identified as academically gifted in the local school administrative unit. The total number of children for which funds shall be allocated pursuant to this subdivision is ~~43,114~~ 43,739 for the ~~1993-94~~ 1994-95 school year.
- (2) Each local school administrative unit shall receive for exceptional children other than academically gifted children the sum of ~~\$1,923.79~~ \$1,956.52 per child for the lesser of (i) all children who are identified as exceptional children other than academically gifted children or (ii) twelve and five-tenths percent (12.5%) of the ~~1992-93~~ 1993-94 actual average daily membership in the local school administrative unit. The maximum number of children for which funds shall be allocated pursuant to this subdivision is ~~125,316~~ 127,668 for the ~~1993-94~~ 1994-95 school year.
- (3) Each local school administrative unit in which more than twelve and five-tenths percent (12.5%) of the ~~1992-93~~ 1993-94 actual average daily membership are identified as exceptional children other than academically gifted children shall receive \$418.76 per child in excess of the twelve and five-tenths percent (12.5%). These funds shall be used only for nonrecurring expenditures and other expenditures for exceptional children other than academically gifted children that do not impose future obligations on the State or local governments.

The dollar amounts allocated under subdivisions (1) and (2) of this subsection for exceptional children shall also increase in accordance with legislative salary increments for personnel who serve exceptional children."

(b) Section 134(d) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(d) The State Board of Education shall report its preliminary recommendations, including any proposals for modified laws, rules, or policies and findings under subsections (b) and (c) of this section to the

Commission on Children with Special Needs and to the chairs of the appropriations committees and the appropriations subcommittees on education of the Senate and the House of Representatives by March 15, 1994, 1994, and its final recommendations by January 1, 1995."

(c) Of the funds appropriated for increases in average daily membership for the 1994-95 fiscal year, the sum of one million two hundred twenty-nine thousand four hundred seventy-two dollars (\$1,229,472) shall be used for the recurring costs of implementing subsection (a) of this section.

(d) The State Board of Education shall allocate the sum of five hundred fifty thousand dollars (\$550,000) from State Aid to Local School Administrative Units for the 1994-95 fiscal year to continue support for the Advanced Placement Program in the public schools.

Requested by: Senators Daniel, Plyler, Ward, Perdue, Representatives Rogers, Black, Barnes, Nesbitt, Diamont

#### TEACHER SALARY SCHEDULES

Sec. 19.6. (a) The Director of the Budget may transfer from the Reserve for Salary Increases for the 1994-95 fiscal year funds necessary to implement the teacher salary schedule set out in subsection (b) of this section, including funds for the employer's retirement and social security contributions and funds for annual longevity payments as provided in Section 127 of Chapter 321 of the 1993 Session Laws, commencing July 1, 1994, for all teachers whose salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction. The longevity payment shall be paid in a lump sum once a year.

(b)(1) Beginning July 1, 1994, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "A" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

<u>Years of Experience</u>	<u>1994-95 Salary</u>
00	\$2,062
01	2,103
02	2,145
03	2,231
04	2,276
05	2,322
06	2,368
07	2,415
08	2,463
09	2,512
10	2,562
11	2,613
12	2,665
13	2,718
14	2,772
15	2,827

16	2,884
17	2,942
18	3,001
19	3,061
20	3,122
21	3,184
22	3,248
23	3,313
24	3,379
25	3,447
26	3,516
27	3,586
28	3,658
29	3,731
30+	3,731

- (2) Beginning July 1, 1994, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "G" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

<u>Years of Experience</u>	<u>1994-95 Salary</u>
00	\$2,191
01	2,235
02	2,280
03	2,371
04	2,418
05	2,466
06	2,515
07	2,565
08	2,616
09	2,668
10	2,721
11	2,775
12	2,831
13	2,888
14	2,946
15	3,005
16	3,065
17	3,126
18	3,189
19	3,253
20	3,318
21	3,384
22	3,452
23	3,521
24	3,591
25	3,663
26	3,736

27	3,811
28	3,887
29	3,965
30+	3,965

- (3) Certified public school teachers with certification based on academic preparation at the six-year degree level and at the doctoral degree level shall receive a salary supplement as provided in Section 127 of Chapter 321 of the 1993 Session Laws.

(c) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "G" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

Requested by: Senators Daniel, Plyler, Ward, Perdue, Representatives Rogers, Black, Nesbitt, Diamont

#### SCHOOL-BASED ADMINISTRATOR SALARIES

**Sec. 19.7.** (a) Funds appropriated to the Reserve for Salary Increases shall be used to complete the implementation of a new salary schedule for school-based administrators as provided in this act. These funds shall be used for State-paid employees only.

(b) The salary schedule for school-based administrators shall apply only to principals and assistant principals. The salary schedule for the 1994-95 fiscal year is as follows:

	Asst.							
Step	Prin.	Prin.I	Prin.II	Prin.III	Prin.IV	Prin.V	Prin.VI	Prin.VII
0	--	--	--	--	--	--	--	--
1	--	--	--	--	--	--	--	--
2	--	--	--	--	--	--	--	--
3	--	--	--	--	--	--	--	--
4	\$2,491	--	--	--	--	--	--	--
5	2,541	--	--	--	--	--	--	--
6	2,592	--	--	--	--	--	--	--
7	2,644	--	--	--	--	--	--	--
8	2,697	\$2,697	--	--	--	--	--	--

9	2,751	2,751	--	--	--	--	--	--
10	2,806	2,806	\$2,862	--	--	--	--	--
11	2,862	2,862	2,919	--	--	--	--	--
12	2,919	2,919	2,977	\$3,037	--	--	--	--
13	2,977	2,977	3,037	3,098	\$3,160	--	--	--
14	3,037	3,037	3,098	3,160	3,223	\$3,287	--	--
15	3,098	3,098	3,160	3,223	3,287	3,353	--	--
16	3,160	3,160	3,223	3,287	3,353	3,420	\$3,488	--
17	3,223	3,223	3,287	3,353	3,420	3,488	3,558	\$3,629
18	3,287	3,287	3,353	3,420	3,488	3,558	3,629	3,702
19	3,353	3,353	3,420	3,488	3,558	3,629	3,702	3,776
20	3,420	3,420	3,488	3,558	3,629	3,702	3,776	3,852
21	3,488	3,488	3,558	3,629	3,702	3,776	3,852	3,929
22	3,558	3,558	3,629	3,702	3,776	3,852	3,929	4,008
23	3,629	3,629	3,702	3,776	3,852	3,929	4,008	4,088
24	3,702	3,702	3,776	3,852	3,929	4,008	4,088	4,170
25	3,776	3,776	3,852	3,929	4,008	4,088	4,170	4,253
26	3,852	3,852	3,929	4,008	4,088	4,170	4,253	4,338
27	3,929	3,929	4,008	4,088	4,170	4,253	4,338	4,425
28	4,008	4,008	4,088	4,170	4,253	4,338	4,425	4,514
29	4,088	4,088	4,170	4,253	4,338	4,425	4,514	4,604
30	4,170	4,170	4,253	4,338	4,425	4,514	4,604	4,696
31	4,253	4,253	4,338	4,425	4,514	4,604	4,696	4,790
32	--	4,338	4,425	4,514	4,604	4,696	4,790	4,886
33	--	--	4,514	4,604	4,696	4,790	4,886	4,984
34	--	--	4,604	4,696	4,790	4,886	4,984	5,084
35	--	--	--	4,790	4,886	4,984	5,084	5,186
36	--	--	--	4,886	4,984	5,084	5,186	5,290
37	--	--	--	--	5,084	5,186	5,290	5,396
38	--	--	--	--	--	5,290	5,396	5,504
39	--	--	--	--	--	--	5,504	5,614
40	--	--	--	--	--	--	5,614	5,726
41	--	--	--	--	--	--	--	5,841.

(c) The appropriate classification for placement of principals and assistant principals on the salary schedule shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Less than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	More than 65 Teachers.

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.



(d) An assistant principal shall be placed on the step on the salary schedule that reflects total years of experience as a certificated employee of the public schools.

A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal.

(e) Principals and assistant principals with certification based on academic preparation at the six-year degree level and at the doctoral degree level shall be paid a salary supplement as provided in Section 132 of Chapter 321 of the 1993 Session Laws.

(f) There shall be no State requirement that superintendents in each local school unit shall receive in State-paid salary at least one percent (1%) more than the highest paid principal receives in State salary in that school unit: Provided, however, the additional State-paid salary a superintendent who was employed by a local school administrative unit for the 1992-93 fiscal year received because of that requirement shall not be reduced because of this subsection for subsequent fiscal years that the superintendent is employed by that local school administrative unit so long as the superintendent is entitled to at least that amount of additional State-paid salary under the rules in effect for the 1992-93 fiscal year.

(g) Longevity pay for principals and assistant principals shall be as provided for State employees.

(h) (1) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

(2) If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subdivision applies to all transfers on or after the ratification date of this act, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subdivision for one calendar year following the date of the merger.

(i) Except as provided in subsection (h) of this section, the salary of a principal or assistant principal shall not be less for the 1994-95 fiscal year than it was for the 1993-94 fiscal year solely as a result of placement on the salary schedule established in this section.

Requested by: Senators Ward, Perdue, Representatives Rogers, Black, Diamont

REPORT ON TEACHERS LEAVING THE TEACHING PROFESSION

**Sec. 19.9.** G.S. 115C-12 is amended by adding a new subdivision to read:

"(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. -- The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local boards of education to report the information to the State Board in a standard format adopted by the State Board."

Requested by: Senator Perdue, Representative Barnes

#### TASK FORCE ON VOCATIONAL AND TECHNICAL EDUCATION

**Sec. 19.10.** (a) Task Force on Vocational and Technical Education created membership. -- There is created the Task Force on Vocational and Technical Education. The Task Force shall be located administratively in the Department of Public Instruction but shall exercise all its prescribed statutory powers independently of the Department of Public Instruction.

(b) The Task Force shall consist of the following 16 members:

- (1) The State Superintendent of Public Instruction or a designee;
- (2) The State Auditor or a designee;
- (3) The Commissioner of Labor or a designee;
- (4) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;
- (5) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;
- (6) Two members appointed by the Governor;
- (7) Two members of the Senate appointed by the President Pro Tempore of the Senate;
- (8) One businessperson involved in vocational and technical education and one director of vocational and technical education for a local school administrative unit, appointed by the President Pro Tempore of the Senate;
- (9) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (10) One businessperson involved in vocational and technical education and one vocational and technical education teacher appointed by the Speaker of the House of Representatives; and
- (11) The chair of the Governor's Commission on WorkForce Preparedness.

The Governor and the Superintendent of Public Instruction shall each appoint a cochair from the membership of the Task Force.

Vacancies in terms of members shall be filled by the appointing officers.

(c) The Task Force, in collaboration with the Department of Community Colleges, the Department of Public Instruction, and the

Governor's Commission on WorkForce Preparedness shall study the following issues related to vocational and technical education:

- (1) The quality, focus, standards, and future goals of vocational and technical education programs in the public schools, including the current status of local TechPrep, apprenticeship, and other school-to-work programs in North Carolina;
- (2) Funding issues including funding levels of programs, funding sources, distribution of funds, students served, and cost-per-student comparisons;
- (3) Technological and educational quality of equipment and instructional materials, and projected equipment and technology needs for vocational and technical education;
- (4) Current accountability efforts, including program standards and performance measures such as academic and employment outcomes, and review of program evaluation and improvement methods;
- (5) Relevance of vocational and technical education to the workforce and subsequent employment, including the relationship of program focus to current and future labor market;
- (6) Articulation issues, including the linkage of programs to higher education, other governmental workforce programs, and the business community;
- (7) The efficiency and effectiveness of organizational and delivery aspects of existing vocational and technical and school-to-work programs including cooperative education, internships, youth apprenticeships, career academics, school-based enterprises, supervised occupational experiences, vocational student organizations, Tech Prep, and Job Training Partnership Act (JTPA) whether there is unnecessary duplication and overlap, and the appropriate role for each agency involved;
- (8) The efficiency and effectiveness of State and local administration of programs;
- (9) Curriculum and instructional delivery issues, including curriculum review and development and the extent and success of linkage and integration of vocational and technical education to core academic education;
- (10) Career guidance and career counseling in the public schools; and
- (11) Training and retraining of educators involved in vocational and technical education, including the effectiveness of preservice training for teachers, teacher qualification requirements, teacher supply and demand trends, plans for ongoing staff development for teachers, local and State leadership including Department of Public Instruction staff, administrators, principals and superintendents, and necessary changes in staff development.

The Task Force shall make an interim report of the results of its study and its recommendations for modifications in vocational and technical education and school-to-work transition programs to the Joint Legislative Education Oversight Committee, the Governor's Commission on WorkForce

Preparedness, and the State Board of Education prior to January 15, 1995, and a final report prior to March 1, 1996.

(d) Members of the Task Force who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Task Force who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Task Force shall be paid the per diem and allowances set forth in G.S. 138-5.

(e) The Department of Public Instruction shall provide requested professional and clerical staff to the Task Force. The Task Force may also employ professional and clerical staff and shall hire outside consultants to assist it in its work.

(f) The Department of Public Instruction shall use up to one hundred thousand dollars (\$100,000) within its budget for the 1994-95 fiscal year for the work of the Task Force on Vocational and Technical Education.

Requested by: Senators Ward, Perdue, Representatives Barnes, Rogers, Black

#### TEACHER ACADEMY FUNDS

**Sec. 19.11.** (a) Funds appropriated in this act for the operation of the Teacher Academy for the 1994-95 fiscal year shall be used for Teacher Academy training sessions offered for the summer of 1994 and for sessions offered for the summer of 1995 prior to July 1, 1995. These funds include the sum of three hundred seventy-five thousand dollars (\$375,000) in nonrecurring funds for training sessions for additional teachers during the first fiscal year of program implementation.

(b) The Task Force on Teacher Staff Development shall evaluate the Teacher Academy Plan it developed in accordance with Section 141 of Chapter 321 of the 1993 Session Laws and shall consider how it might fit into a comprehensive approach to staff development. The State Board of Education shall conduct an evaluation of the quality of the 1994-95 Teacher Academy sessions. The Task Force shall address more completely the factors it was directed to address by Section 141 and shall develop a more comprehensive approach for teacher professional development. The Task Force shall place special emphasis on the following:

- (1) Efficient and effective use of existing State, federal, and local resources through an integrated, nonduplicative delivery of professional development to teachers.
- (2) Short-range and long-range plans for school-based staff development that address the professional development needs of teachers in site-based decision making, core content areas, instruction, use of modern technology, and other appropriate subjects.
- (3) More effective use of the North Carolina Center for Advancement of Teaching facility and staff in the delivery of teacher professional development.
- (4) Training schedules and opportunities that minimize the time teachers are away from classroom instruction.

- (5) Development of organizational arrangements and technologies that encourage teacher networking and collaboration.
- (6) Effective use of the facilities and faculties of The University of North Carolina campuses in the delivery of professional development to teachers.
- (7) Effective use of existing and planned telecommunications and long-distance learning systems for teacher professional development to limit expenditures for travel and associated costs.
- (8) Professional development that meets the unique needs of individual schools and a plan to ensure quality in the various staff development offerings.
- (9) A proposal for the ongoing coordination of teacher professional development activities among local school administrative units, the Department of Public Instruction, the Technical Assistance Centers, The University of North Carolina, NCCAT, private colleges and universities, and any other providers of teacher professional development.

The Task Force on Teacher Staff Development shall also review the work of the Teacher Training Task Force and consider incorporating elements of the findings and recommendations of the Teacher Training Task Force in the Plan.

The Task Force shall make an interim report on (i) its progress on the Plan, (ii) expenditures on and evaluation of the Teacher Academy programs during the summer of 1994, and (iii) projected expenditures for the summer of 1995 to the Joint Legislative Education Oversight Committee and the State Board of Education no later than October 1, 1994. The final Plan shall be submitted to the State Board of Education for adoption no later than December 1, 1994. Any legislative action required to implement the Plan shall be submitted to the Joint Legislative Education Oversight Committee and the General Assembly no later than January 15, 1995.

(c) Effective July 7, 1994, Chapter 718 of the 1993 Session Laws is repealed.

Requested by: Senator Ward, Representatives Rogers, Black

#### STATISTICS ON STUDENTS ELIGIBLE FOR FREE AND REDUCED PRICE LUNCHES

**Sec. 19.12.** Of the funds appropriated to the Department of Public Instruction in this act, the Department of Public Instruction shall use fifty thousand dollars (\$50,000) to compile and analyze data on the number of students eligible for free and reduced price lunches. The analysis shall include consideration of whether this data is a valid measure of income at the local school administrative unit level and at the school building.

Requested by: Senators Daniel, Plyler, Ward, Warren, Perdue, Representatives Jeffus, Rogers, Black, Barnes, Diamont

#### SUBSTITUTE TEACHER PAY

**Sec. 19.13.** Substitute teachers who hold teacher certificates shall be paid at a rate of fifty-seven dollars (\$57.00) per day. Substitute teachers who do not hold teacher certificates but have completed effective teacher



training shall be paid at a rate of fifty dollars (\$50.00) per day. Substitute teachers who neither hold teacher certificates nor have completed effective teacher training shall be paid at a rate of forty dollars (\$40.00) per day.

Requested by: Senators Ward, Perdue, Daniel, Plyler, Representatives Nesbitt, Diamont, Rogers, Black, Barnes  
**BASIC EDUCATION PROGRAM FUNDS**

**Sec. 19.17.** Of the funds appropriated in this act to State Aid to Local School Administrative Units, the sum of fifty-five million eight hundred twenty-four thousand one hundred thirty-six dollars (\$55,824,136) shall be used to implement the Basic Education Program. These funds shall be allocated as follows:

- (1) \$10,000,000 shall be allocated for school psychologists, social workers, and guidance counselors for kindergarten through the eighth grade in accordance with the Basic Education Program. Each local school administrative unit shall comply with the staffing requirements of the Basic Education Program regarding school psychologists, social workers, and guidance counselors for kindergarten through the eighth grade.
- (2) \$26,320,319 shall be used to implement fully the class size reduction at the kindergarten level in accordance with the Basic Education Program.
- (3) \$9,536,119 shall be used to implement fully textbook funding in accordance with the Basic Education Program by restoring textbook purchasing power to the 1985 level.

The General Assembly urges the State Board of Education to carry out its duties under G.S. 115C-96 by requesting sufficient appropriations from the General Assembly to provide the children of the public elementary and secondary schools with free basic textbooks. The General Assembly also urges the Governor to include that amount in the proposed budget and to carry out the Governor's duties under G.S. 143-11 by accompanying the proposed budget with the State Board of Education's request for appropriations for textbooks.

The State Board of Education shall adjust the funds for positions allocated pursuant to this section to reflect legislative adjustments to average salary and the current average daily membership.

Requested by: Representative Culpepper  
**DARE SCHOOL PAY DATE**

**Sec. 19.18.** Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Dare County Board of Education shall be paid on the twelfth day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of the Dare County Board of Education.

This section shall not be construed to authorize prepayment of any employees by the Dare County Board of Education.

Requested by: Representatives Yongue, Cummings, Lee  
SCOTLAND SCHOOL PAY DATE

Sec. 19.19. Section 143.1 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 143.1. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Scotland County Schools except for school bus drivers, who are paid on a monthly basis, shall be paid on the ~~fifteenth~~ tenth day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of Scotland County Schools.

This section shall not be construed to authorize prepayment of any employees by the Scotland County Board of Education."

Requested by: Representatives Lutz, Hunt, Weatherly  
REPEAL CLEVELAND SCHOOL PAY DATE

Sec. 19.20. Section 2 of Chapter 311 of the 1991 Session Laws is repealed.

Requested by: Representatives Wilmoth, Cromer  
WATAUGA SCHOOL PAY DATE

Sec. 19.21. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115-316(a), or any other provision of law, all 10-month employees of the Watauga County Board of Education shall be paid on the tenth day of each month, and all other employees of the Watauga County Board of Education shall be paid on the last day of each month. If the pay date so established falls on a weekend or holiday, the employee shall be paid on the last workday before the established pay date. Nothing in this section shall have the effect of changing the rate of pay for any employee of the Watauga County Board of Education.

This section shall not be construed to authorize prepayment of any employees of the Watauga County Board of Education.

Requested by: Representative Flaherty  
CALDWELL SCHOOL PAY DATE

Sec. 19.22. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Caldwell County Board of Education who are paid on a monthly basis shall be paid on the fifteenth day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of Caldwell County Board of Education.

This section shall not be construed to authorize prepayment of any employees by the Caldwell County Board of Education.

Requested by: Senator Ward, Representatives Kuczmarski, Rogers, Black  
CUED SPEECH FUNDS

Sec. 19.23. Of the funds appropriated in this act to the Department of Public Instruction, the sum of ninety-five thousand dollars (\$95,000) shall be used as a grant-in-aid for the Cued Speech Center of Wake County. The Center shall use these funds to provide transition services.

The Department of Public Instruction shall evaluate the use of these funds and report the results of the evaluation to the Commission on Children with Special Needs before October 1, 1995.

Requested by: Senator Ward, Representatives Rogers, Black, Diamont  
**ALLOCATIONS OF BASIC EDUCATION PROGRAM FUNDS FOR SMALL CITY SCHOOL SYSTEMS**

**Sec. 19.24.** The State Board of Education shall modify the position allocation formulas under the Basic Education Program by rounding all fractions of positions to the next whole position for each city school administrative unit with an average daily membership of less than 3,000 students.

Requested by: Senator Ward, Representatives Rogers, Black, Diamont  
**SCHOOL ADMINISTRATOR ALLOTMENT FORMULAS**

**Sec. 19.25.** The State Board of Education shall modify the allotment formula for school administrators so that (i) the base allotment under the formula is the same for all local school administrative units, regardless of the average daily membership of the units and (ii) the remainder of the funds is allotted on the basis of average daily membership.

Requested by: Senators Winner of Mecklenburg, Ward, Perdue, Daniel, Plyler, Representatives Diamont, Rogers, Black, Barnes, Nesbitt  
**SCHOOL TECHNOLOGY PLANS/FUNDS**

**Sec. 19.26.** (a) G.S. 115C-102.6 reads as rewritten:

*"§ 115C-102.6. ~~Duties.~~ Duty to prepare a requirements analysis and propose a State school technology plan.*

The Commission shall prepare a requirements analysis and propose a State school technology plan ~~to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee~~ for improving student performance in the public schools through the use of learning and instructional management technologies.

In developing this plan, the Commission shall:

- (1) Assess factors related to the current use of learning and instructional management technologies in the schools, including what is currently being used, how the current use of technology relates to the standard course of study, how the effectiveness of learning and instructional management technologies is being evaluated, how schools are paying for learning and instructional management technologies, and what training school employees have received in the use of learning and instructional management technology and networks.
- (2) Identify the instructional goals that can be met through the use of learning and instructional management technologies. The goals may include teaching the standard course of study, reaching students with a broad range of abilities, and ensuring that all students have access to a complete curriculum regardless of the geographical location or the financial resources of the school.

- (3) Examine the types of learning and instructional management technologies available to meet the identified instructional goals, including computers, audiovisual aids, science laboratory equipment, vocational education equipment, and distance learning networks. The Commission shall consider the compatibility and accessibility of different types of learning and instructional management technologies, including compatibility with the planned statewide broadband ISDN network, and whether they may be easily communicated from one site to another. The Commission shall also consider linkages between learning and instructional management technologies and existing State and local administrative systems.
- (4) Develop a basic level of learning and instructional management technology for every school in the State. The basic level may include:
  - a. A computer lab with student stations or a specified number of student computer stations in each classroom for the use of instructional software such as computer-assisted instruction, integrated learning systems, instructional management systems, and applications software such as word processing, database, spreadsheet, and desktop publishing.
  - b. A computer workstation in every classroom for teachers to use in preparation and delivery of instruction and for administrative record keeping.
  - c. A television monitor and video cassette-recorder in every classroom to take advantage of open-air broadcast programs, satellite programs, and instructional video tapes available from the library/media center.
  - d. Computer workstations at each elementary and secondary school, housed in the library/media center, for individual students to use for basic skills instructional software.
  - e. A telecommunications line, modem, and software in each school's library/media center that will allow students and teachers access to external databases and resources for research purposes.
  - f. The availability of telephones for teachers.
  - g. Initial training for the principal and teachers from each school in the use of the new technology.
- (5) Consider staffing required to operate the learning and instructional management technologies and options for maintaining the equipment.
- (6) Consider the types of staff development necessary to maximize the benefits of learning and instructional management technologies and determine the appropriate ways to provide the necessary staff development.
- (7) Develop a cost analysis of any plans and proposals that it develops."
- (b) Part 3A of Article 8 of Chapter 115C of the General Statutes is amended by adding four new sections to read:

"§ 115C-102.6A. Elements of the State school technology plan.

(a) The State school technology plan shall be a long-term State implementation plan for using funds from the State School Technology Fund and other sources to improve student performance in the public schools through the use of learning and instructional management technologies. The purpose of the plan shall be to provide a cost-effective foundation of flexible and long-lasting technology to promote substantial gains in student achievement.

(a1) In developing the plan the Commission shall consider and plan for the relationship of the North Carolina Information Highway to the plan. In particular the plan shall establish priorities for the acquisition of school technologies including how the Information Highway fits into those priorities.

(b) Components of the State school technology plan shall include at least the following:

- (1) Common technical standards and uniform practices and procedures that provide statewide economies of scale in procurements, training, support, planning, and operations.
- (2) Conceptual technical architecture that includes:
  - a. Principles -- Statements of direction, goals, and concepts to guide the development of technical architecture;
  - b. Standards for interoperability -- Detailed specifications to ensure hardware, software, databases, and other products that may have been developed independently or purchased from different vendors or manufacturers will work together, to the extent that interoperability facilitates meeting instructional or administrative goals; and
  - c. Implementation strategies -- Approaches or guidelines for developing and installing the components of the technical infrastructure.
- (3) A quality assurance policy for all school technology projects, training programs, systems documentation, and maintenance plans.
- (4) Policies and procedures for the fair and competitive procurement of school technology that provide local school administrative units with a vendor-neutral operating environment in which different school technology hardware, software, and networks operate together easily and reliably, to the extent feasible consistent with meeting instructional or administrative goals. The operating environment includes all hardware and software components and configurations necessary to accomplish the integrated functions for school technology such as (i) types and sizes of computer platforms, telecommunications equipment, and associated communications protocols; (ii) operating systems for the computer processors; (iii) applications and other operating and support software; and (iv) other equipment, items, and software, such as printers, terminals, data and image storage devices, and other input, output, and storage devices.
- (5) A comprehensive policy for inventory control.



- (6) Parameters for continuous, ongoing training for all personnel involved in the use of school technology. Training shall focus on the integration of technology and instruction and on the use of particular applications.
- (7) Recommendations to the State Board of Education of requirements for preservice teacher training on the integration of teaching and school technology.
- (8) Proposals for leadership training on the use of school technology to improve instruction and as a management tool.
- (9) Development of expertise at the State and regional levels on school technology.
- (10) Flexibility to enable local school administrative units and individual schools to meet individual school unit and building needs.
- (11) Flexibility to meet the needs of all students, allow support to students with a wide range of abilities, and ensure access to challenging curricula and instruction for children at risk of school failure.
- (12) Use of technologies to support challenging State and local educational performance goals.
- (13) Effective and integrated use of technologies compatible with (i) the standard course of study, (ii) the State assessment program, and (iii) related student data management.
- (14) Use of technologies as a communication, instructional, and management tool and for problem-solving, exploration, and advanced skills.
- (15) Proposals for addressing equipment needs for vocational education, Tech Prep, and science instruction.
- (16) Specifications for minimum components of local school system technology plans.

§ 115C-102.6B. Approval of State school technology plan.

(a) The Commission shall present the State school technology plan it develops to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee for their comments prior to January 1, 1995. At least every two years thereafter, the Commission shall develop any necessary modifications to the State school technology plan and present them to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee.

(b) After presenting the plan or any proposed modifications to the plan to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee, the Commission shall submit the plan or any proposed modifications to (i) the Information Resources Management Commission for its approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4), and (ii) the State Board of Education for its approval of the components of the plan set out in G.S. 115C-103.6A (1) through (16).

At least one-fourth of the members of any technical committee that reviews the plan for the Information Resources Management Commission shall be people actively involved in primary or secondary education.

(c) If no changes are made to the plan or the proposed modifications to the plan after the submission to the Information Resources Management Commission and the State Board of Education, the plan or the proposed modifications shall take effect upon approval by the Information Resources Management Commission and the State Board of Education.

§ 115C-102.6C. Approval of local school system technology plans.

(a) Each local board of education shall develop a local school system technology plan that meets the requirements of the State school system technology plan. In developing a local school system technology plan, a local board of education is encouraged to coordinate its planning with other agencies of State and local government, including other local school administrative units.

The Information Resources Management Commission shall assist the local boards of education in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the local boards of education in developing the instructional and technological aspects of the plan.

Each local board of education shall submit the local plan it develops to the Information Resources Management Commission for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Information Resources Management Commission and the Department of Public Instruction, shall approve all local plans that comply with the requirements of the State school technology plan.

(b) After a local school system technology plan is approved by the State Board of Education, all State funds spent by the local board of education for any aspect of school technology shall be used to implement the local school system technology plan.

(c) After a local school system technology plan is approved by the State Board of Education, the local board of education may use funds in the State School Technology Fund that are allocated to the local school administrative unit to implement the plan.

"§ 115C-102.6D. Establishment of the State School Technology Fund; allocation and use of funds.

(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund consisting of any monies appropriated to it by the General Assembly.

(b) Funds in the State School Technology Fund shall be allocated to local school administrative units as directed by the General Assembly. Funds allocated to each local school administrative unit shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(c) Each local school administrative unit with a local school system technology plan approved by the State Board of Education may use funds

allocated to it to implement its local plan or as otherwise specified by the General Assembly."

(c) G.S. 115C-102.7 reads as rewritten:

"§ 115C-102.7. ~~Reports.~~ Monitoring and evaluation of State and local school system technology plans; reports.

(a) The Commission shall monitor and evaluate the development and implementation of the State and local school system technology plans. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology. The Commission shall make a progress report prior to March 15, 1994, and a final report prior to May 15, 1994, on the plan it develops to The Commission shall report in October of each year to the State Board of Education, the Joint Legislative Commission on Governmental Operations Operations, and the Joint Legislative Education Oversight Committee. Committee on the development and the implementation of State and local school system technology plans.

(a1) The Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee may meet jointly to consider the reports from the Commission on School Technology and they may appoint subcommittees to jointly consider the reports.

(b) The Commission shall provide notice of meetings, copies of minutes, and periodic briefings to the chair of the Information Resources Management Commission and the chair of the Technical Committee of the Information Resources Management Commission."

(d) Funds in the amount of forty-two million (\$42,000,000) are appropriated in this act to the Office of State Budget and Management, School Technology Reserve. These funds and any other funds that may be provided by the General Assembly for the 1994-95 fiscal year for learning and instructional management technology shall be spent only in accordance with subsequent legislation enacted by the General Assembly. It is the intent of the General Assembly to enact such legislation within 30 days of receiving the State school technology plan approved by the State Board of Education and the Information Resources Management Commission pursuant to G.S. 115C-102.6B(c)

(e) Of the funds appropriated to the Office of the State Controller, Division of Information Resources Management, in this act, the sum of one hundred fifty thousand dollars (\$150,000) shall be used, after March 1, 1995, for three professional employee positions to be located in Raleigh and one clerical employee position to be located in Raleigh, and necessary office furniture, supplies, and equipment. These employees shall advise the Information Resources Management Commission concerning the evaluation of the technological aspects of the local school system technology plans. To the extent that resources are available to do so, they shall also respond to requests for advice from the State Board of Education and the Department of Public Instruction, assist local school administrative units in developing local school system technology plans, and assist local governments with regard to the use of technology.

(f) The State Board of Education shall allocate the sum of two hundred thousand dollars (\$200,000) from State Aid to Local School Administrative Units to be used after March 1, 1995 for six professional employee positions in the Department of Public Instruction and for necessary office furniture, supplies, and equipment. The employees shall be located in the Technical Assistance Centers of the Department of Public Instruction. These employees shall respond to requests for advice from the State Board of Education and assist local school administrative units in developing local school system technology plans. To the extent that resources are available to do so they shall also assist local governments with regard to the use of technology.

It is the intent of the General Assembly to include these funds in the continuation budget of the Department of Public Instruction for the 1995-97 fiscal biennium.

(g) G.S. 115C-102.6B, which is enacted in subsection (b) of this section, becomes effective November 1, 1994. The remainder of this section becomes effective July 1, 1994.

Requested by: Senators Ward, Perdue, Representatives Rogers, Barnes  
CAREER DEVELOPMENT PILOT/SITE-BASED MANAGEMENT

Sec. 19.27. (a) Section 126 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 126. The State Board of Education shall require the local school administrative units receiving career development funds to modify their differentiated pay plans for the 1994-95 fiscal year so that the cost of the differentiated pay plan equals (i) five percent (5%) of teacher and administrator salaries and of the employer's contributions for social security and retirement, for the prior fiscal year, and (ii) the amount of local funds available for differentiated pay. The State Board of Education shall require the local school administrative units receiving career development funds to modify their differentiated pay plans for the 1995-96 fiscal year so that the cost of the differentiated pay plan equals (i) three percent (3%) of teacher and administrator salaries and of the employer's contributions for social security and retirement for the prior fiscal year, and (ii) the amount of local funds available for differentiated pay.

It is the intent of the General Assembly that this reduction in appropriations not result in employees receiving less on a monthly basis in salary and State-funded bonuses during the 1994-95 fiscal year or the 1995-96 fiscal year than they received on a monthly basis during the 1993-94 fiscal year so long as the employees qualify for bonuses under the local differentiated pay plan."

(b) Members of the Task Force on Site-Based Management shall serve until September 1, 1996, and shall be eligible for reappointment. Successive appointments shall be for two-year terms.

Requested by: Representatives Rogers, Black, Nesbitt, Diamont, Senator Daniel  
FUNDS FOR NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS



**Sec. 19.28.** The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. In order to apply for the NBPTS certification process, teachers must have three years or more of teaching experience, be currently teaching, have graduated from an accredited college or university, and hold a valid State teaching license. Upon successful completion of a year-long process of developing a portfolio of student work and videotapes of teaching/learning activities for NBPTS review and then participating in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination, teachers may become NBPTS-certified.

Of the funds appropriated to the Department of Public Instruction in this act, the sum of five hundred thousand dollars (\$500,000) for the 1994-95 fiscal year shall be used to pay for:

- (1) The National Board for Professional Teaching Standards (NBPTS) participation fee and for up to three days of approved paid leave for teachers participating in the NBPTS program during the 1994-95 school year for State-paid teachers who (i) have completed three years of teaching in North Carolina schools operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina, or affiliated with The University of North Carolina, prior to application for NBPTS certification, and (ii) who have not previously received State funds for participating in any certification area in the NBPTS program. Teachers participating in the program shall take paid leave only with the approval of their supervisors.

A teacher for whom the State pays the participation fee (i) who does not complete the process or (ii) who completes the process but does not teach in a North Carolina public school for at least one year after completing the process, shall repay the certification fee to the State. Repayment is not required if the process is not completed or the teacher fails to teach for one year due to the death or disability of the teacher or other extenuating circumstances as may be recognized by the State Board.

- (2) An annual bonus of four percent (4%) of the teacher's State-paid salary for the 10-month school year for State-paid teachers who (i) completed three years of teaching in North Carolina schools operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina prior to application for NBPTS certification and (ii) complete the certification process in 1993-94 and receive NBPTS certification in 1994-95. The bonus for the 1994-95 fiscal year shall be paid immediately upon certification. The bonus for each subsequent fiscal year shall be paid at the end of each full school year that the teacher teaches full-time in a North Carolina school.



The State Board of Education shall study incentive options for teachers who obtain NBPTS certification and the cost of those incentives. The State Board shall also study the impact of NBPTS certification on student performance. The State Board shall report the preliminary results of this study to the Joint Legislative Education Oversight Committee in December of 1994. The State Board shall make a final report on the impact of NBPTS certification on student performance to the Joint Legislative Education Oversight Committee in January of 1997.

Requested by: Senator Ward, Representatives Rogers, Black  
ACADEMIC AND SUPPORT PROGRAM FOR COURT-INVOLVED YOUTH

**Sec. 19.29.** Of the funds appropriated to the Department of Public Instruction in this act, the sum of one hundred seventeen thousand dollars (\$117,000) shall be used to support the two-year comprehensive academic and support program operated by Duke University, in collaboration with North Carolina Central University, the Durham Public Schools, the Durham Companions, and the Durham Educational Network, for court-involved middle school and high school students.

Requested by: Senators Daniel, Plyler, Ward, Representatives Rogers, Black, Michaux, Diamont  
SCHOOL BUS DRIVER/SALARY RANGE

**Sec. 19.30.** (a) The salary range for school bus drivers shall be at grade 51 as established by the State Board of Education, as adjusted by legislative across-the-board salary increases, for 10 months of employment. Local boards of education shall pay all school bus drivers within this range.

(b) Of the funds appropriated to State Aid to Local School Administrative Units in this act, the sum of three million five hundred thousand dollars (\$3,500,000) shall be used to increase the pay of all school bus drivers an average of four and six-tenths percent (4.6%) within the salary range established in subsection (a) of this section. This increase is in addition to any legislative across-the-board increase granted by the General Assembly for the 1994-95 fiscal year.

(c) The average salary of a State-paid school bus driver for the 1994-95 school year within each local school administrative unit, computed on an hourly basis, shall be at least eight dollars (\$8.00) per hour.

Requested by: Senator Ward, Representatives Rogers, Black  
SCHOOL LEADERSHIP TRAINING FUNDS

**Sec. 19.31.** Of the funds appropriated for State Aid to Local School Administrative Units in this act, the State Board of Education shall allocate the sum of five hundred thousand dollars (\$500,000) to continue support for the school leadership training program in the public schools that was authorized by the 1979 General Assembly.

Requested by: Senators Daniel, Plyler, Perdue, Lee, Ward, Winner of Mecklenburg, Smith, Warren, Hartsell, Representative Rogers

## LOW-WEALTH AND SMALL SCHOOL SUPPLEMENTAL FUNDING CHANGES

Sec. 19.32. (a) Subsection (c) of Section 138 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(c) *Definitions.* -- As used in this section:

- (1) 'Anticipated county property tax revenue availability' means the county adjusted property tax base multiplied by the effective State average tax rate.
- (2) 'Anticipated total county revenue availability' means the sum of the
  - a. Anticipated county property tax revenue availability,
  - b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,
  - c. Food stamp exemption reimbursement received by the county under G.S. 105-164.44C,
  - d. Homestead exemption reimbursement received by the county under G.S. 105-277.1A,
  - e. Inventory tax reimbursement received by the county under G.S. 105-275.1 and G.S. 105-277A,
  - f. Intangibles tax distribution and reimbursement received by the county under G.S. 105-213 and G.S. 105-213.1, and
  - g. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.
- (3) 'Anticipated total county revenue availability per student' means the anticipated total county revenue availability for the county divided by the average daily membership of the county.
- (4) 'Anticipated State average revenue availability per student' means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.
- (5) 'Average daily membership' means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.
- (6) 'County adjusted property tax base' shall be computed as follows:
  - a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,
  - b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,
  - c. Add to the resulting amount the:

1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,
  2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
  3. Personal property value  
for the county.
- (7) 'County adjusted property tax base per square mile' means the county adjusted property tax base divided by the number of square miles of land area in the county.
- (8) 'County wealth as a percentage of State average wealth' shall be computed as follows:
- a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,
  - b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,
  - c. Compute the percentage that the county adjusted property tax base per square mile is of the State adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,
  - d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.
- (9) 'Effective county tax rate' means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.
- (10) 'Effective State average tax rate' means the average of effective county tax rates for all counties.
- (10a) 'Local current expense funds' means the most recent county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer.
- (11) 'Per capita income' means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.
- (12) 'Sales assessment ratio studies' means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (13) 'State average current expense appropriations per student' means the most recent State total of county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer, divided by the total State average daily membership.

- (14) 'State average adjusted property tax base per square mile' means the sum of the county adjusted property tax bases for all counties divided by the number of square miles of land area in the State.
- (14a) 'Supplant' means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (15) 'Weighted average of the three most recent annual sales assessment ratio studies' means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used."

(b) Subsection (d) of Section 138 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(d) Eligibility for funds. -- Except as provided in subsection (h) of this section, The State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%)."

(c) Subsection (h) of Section 138 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(h) Non supplant requirement. -- A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant ~~existing State and local funding for public schools.~~ local current expense funds. Beginning with the 1995-96 fiscal year, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The average of the local per student current expense appropriation for the three most recent years is less than ninety-five percent (95%) of the greater of (i) the local per student current expense appropriation for the 1991-92 fiscal year; or (ii) the average local per student current expense appropriation of the county for the three fiscal years immediately prior to the current year; and
- (2) The county cannot show (i) that it has remedied the deficiency in funding, or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

~~The Local Government Commission shall analyze the budgets and the expenditures of school administrative units that receive funds under this~~

~~section in light of their budgets and expenditures for the previous year and shall determine whether those funds were used to supplement and not supplant State and local funding for public schools. The Local Government Commission shall report the results of its study to the State Board of Education, to the Joint Legislative Education Oversight Committee, and to the Appropriations Committees of the Senate and the House of Representatives, prior to May 1, 1994, and May 1, 1995."~~

(d) Subsection (i) of Section 138 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(i) **Reports.** -- Counties that receive funds under this section shall report to the State Board of Education before March 1 each year on how they are using the funds for the fiscal year. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 1994, and May 1, ~~1995~~, 1995, and annually thereafter on how the funds are being used. In its report the State Board shall analyze local appropriations and identify counties that supplant funds.

The Local Government Commission shall report on March 1, 1995, and annually thereafter on county appropriations to local school current expense funds to the State Board of Education and to the Appropriations Committees of the Senate and House of Representatives."

(e) Section 138.1 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 138.1. (a) *Funds for Small School Systems.* -- Except as provided in subsection (b) of this section, The the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of less than 3,000 students and (ii) to each county school administrative unit with an average daily membership of from 3,000 to 4,000 students if the county in which the local school administrative unit is located has a county adjusted property tax base per student that is below the State adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,000 to 4,000 students. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position.
- (2) Provide ~~four~~ five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four and ~~six~~ seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or less.
- (3) Provide additional program enhancement teachers adequate to offer the standard course of study.
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.
- (5) Provide a base for the consolidated funds allotment of at least one hundred fifty thousand dollars (\$150,000), excluding textbooks.
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fund fully the program, the State



Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

(b) *Nonsupplant requirement.* -- A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant existing State and local funding for public schools, local current expense funds. Beginning with the 1995-96 fiscal year, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The average of the local per student current expense appropriation for the three most recent years is less than ninety-five percent (95%) of the greater of (i) the local per student current expense appropriation for the 1991-92 fiscal year; or (ii) the average local per student current expense appropriation of the county for the three fiscal years immediately prior to the current year; and
- (2) The county cannot show (i) that it has remedied the deficiency in funding, or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

~~The Local Government Commission shall analyze the budgets and the expenditures of school administrative units that receive funds under this section in light of their budgets and expenditures for the previous year and shall determine whether those funds were used to supplement and not supplant State and local funding for public schools. The Local Government Commission shall report the results of its study to the State Board of Education, the Joint Legislative Oversight Committee, and the Appropriations Committees of the Senate and the House of Representatives, prior to May 1, 1994 and May 1, 1995.~~

(c) *Definitions.* -- As used in this section:

- (1) 'Average daily membership' means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education.
- (2) 'County adjusted property tax base per student' means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.
- (2a) 'Local current expense funds' means the most recent county current expense appropriations to public schools, as reported by

counties in the annual county financial information report to the State Treasurer.

- (3) 'Sales assessment ratio studies' means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (4) 'State adjusted property tax base per student' means the sum of all county adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.
- (4a) 'Supplant' means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (5) 'Weighted average of the three most recent annual sales assessment ratio studies' means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

(d) *Reports.* -- Counties that receive funds under this section shall report to the State Board of Education before March 1 each year on how they are using the funds for the fiscal year. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 1994, and May 1, ~~1995~~, 1995, and annually thereafter on how the funds are being used. In its report the State Board shall analyze local appropriations and identify counties that supplant funds.

The Local Government Commission shall report on March 1, 1995, and annually thereafter on county appropriations to local school current expense funds to the State Board of Education and to the Appropriations Committees of the Senate and House of Representatives."

Requested by: Senator Ward, Representative Diamont

#### CLARIFICATION OF THE NORTH CAROLINA HIGH SCHOOL ATHLETIC ASSOCIATION UNDER THE STATE TORT CLAIMS ACT

Sec. 19.33. (a) G.S. 143-291 is amended by adding a new subsection to read:

"(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This subsection does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article."

(b) This section becomes effective with respect to causes of action arising on or after the date of ratification of this act.

Requested by: Representative Diamont, Senator Daniel  
**DIFFERENTIATED PAY**

**Sec. 19.34.** Of the funds appropriated in this act for State Aid to Local School Administrative Units for the 1994-95 fiscal year, the sum of nineteen million four hundred thousand dollars (\$19,400,000) shall be used for differentiated pay for certified public school employees in local school administrative units other than the career development pilot units and the sum of ten million four hundred eight thousand nine hundred fifty dollars (\$10,408,950) shall be used for differentiated pay for noncertified public school employees in career development pilot units and in local school administrative units that are not career development pilot units. Prior to October 1, 1994, each local board of education shall examine its differentiated pay plan for the 1994-95 fiscal year and modify it as necessary to ensure that the plan can be implemented with regard to (i) certified employees within State and local funds available for differentiated pay for certified employees and (ii) noncertified employees within State and local funds available for differentiated pay for noncertified employees. The local board shall submit the modified plan to the Superintendent of Public Instruction for approval. The Superintendent shall approve the plan if he finds that it is lawful and the plan shall become effective upon approval of the Superintendent.

## PART 20. DEPARTMENT OF TRANSPORTATION

Requested by: Senator Lee, Representatives McAllister, McLaughlin, Bowie, Lemmond

### DIVISION OF MOTOR VEHICLES TO REPORT ON EMISSION INSPECTION PROGRAM

**Sec. 20.** The Division of Motor Vehicles shall report quarterly, beginning in January 1995, to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division, on the Emission Inspection Program's compliance with regulations the Environmental Protection Agency adopted for the inspection and maintenance activities required in the Clean Air Amendments of 1990. The report shall include the receipts and expenditures from the Emissions Program Account.

Requested by: Senator Lee, Representatives McAllister, McLaughlin, Bowie, Lemmond

### BRANCH AGENT TRANSACTION RATE

**Sec. 20.1.** Section 155 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 155. The Division of Motor Vehicles of the Department of Transportation shall compensate a contractor with whom it has a contract under G.S. 20-63(h) at the rate of ~~ninety-two cents (92¢)~~ one dollar (\$1.00) for each transaction performed in accordance with the requirements set by the Division. A transaction is any of the following activities:

- (1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.
- (2) Issuance of a handicapped placard or handicapped identification card.
- (3) Acceptance of an application for a personalized registration plate.
- (4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.
- (5) Cancellation of a title because the vehicle has been junked.
- (6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.
- (7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
- (8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.
- (9) Collection of the highway use tax.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8) of this section is a single transaction. Performance of the item listed in subdivision (9) of this section in combination with any other items listed in this section is a separate transaction."

Requested by: Senator Lee, Representatives McAllister, McLaughlin, Bowie, Lemmond

#### AIRCRAFT AND FERRY ACQUISITIONS

**Sec. 20.2.** Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

Requested by: Senators Speed, Lee, Representatives McAllister, Bowie, McLaughlin, Lemmond

#### REVIEW OF RIGHT-OF-WAY MOWING CONTRACTS

**Sec. 20.3.** The Department of Transportation shall audit all contracts for mowing rights-of-way by non-Department personnel to determine whether the contractors are complying with the contract requirements. Not later than September 30, 1994, the Department shall report the results of this audit to the Joint Legislative Transportation Oversight Committee along with recommendations on the nonrenewal and cancellation of contracts when contractors are not meeting contract requirements.

Requested by: Senators Plyler, Lee, Representatives Bowie, Lemmond, McLaughlin, McAllister

#### SIGNING OF STATE-MAINTAINED COUNTY ROADS

**Sec. 20.4.** Five hundred thousand dollars (\$500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded.

Requested by: Senator Lee, Representatives Hall, Bowie, Lemmond, McLaughlin, McAllister  
**ADOPT-A-HIGHWAY STUDY**

**Sec. 20.5.** The Department of Transportation and the Department of Justice shall study and report to the Joint Legislative Transportation Oversight Committee on the effectiveness of and legal issues relating to the Adopt-A-Highway Program. Included in the study and report shall be consideration of the legal issues relating to use of contract services to clean the roadsides and any appropriate legislation, the passage of which may be necessary to permit the use of these contractors. This report shall be submitted to the Joint Legislative Transportation Oversight Committee no later than December 31, 1994. Notwithstanding any other provision of law, pending further action by the General Assembly, the use of contract services to meet the requirements of the Adopt-A-Highway Program shall be permitted on State roads.

Requested by: Representatives McAllister, McLaughlin, Bowie, Lemmond, Senator Lee

**GLOBAL TRANSPARK AUTHORITY TO REIMBURSE HIGHWAY FUND FROM FEDERAL SOURCES**

**Sec. 20.6.** When funds are provided from the Highway Fund to the Global TransPark Authority for environmental impact statements or assessments and the Global TransPark Authority applies for and receives reimbursement for those expenses from federal sources up to one million eight hundred thousand dollars (\$1,800,000), the federal reimbursements shall be paid over by the Global TransPark Authority into the Highway Fund within 30 days of receipt. These funds shall be allocated to State-funded maintenance appropriations in the manner approved by the Board of Transportation.

Requested by: Representative Holmes, Bowie, Lemmond, McAllister, McLaughlin, Senator Lee

**DRIVERS EDUCATION FUND TO PAY SALARY INCREASES**

**Sec. 20.7.** The Drivers Education Fund shall pay the salary increases of the teachers or State employees whose positions are funded from the Drivers Education Fund.

Requested by: Representatives McAllister, McLaughlin, Bowie, Lemmond, Senator Lee

**RAILROAD REHABILITATION AND RAILROAD ACCESS FUNDS**

**Sec. 20.8.** If Senate Bill 62 is not enacted by the 1993 General Assembly, the funds appropriated from the Highway Fund for the transfer of



three positions from the Utilities Commission to the Department of Transportation may be used for railroad access and railroad rehabilitation purposes.

Requested by: Senator Lee, Representatives Redwine, Bowie, Lemmond, McAllister, McLaughlin

**SOME TEMPORARY DRAW BRIDGE OPERATOR POSITIONS  
CONVERTED TO PERMANENT FULL-TIME POSITIONS**

**Sec. 20.9.** Any temporary full-time draw bridge operator positions in the Department of Transportation that are filled by personnel who have worked for 12 or more months as of the effective date of this act, shall be converted to permanent full-time positions, subject to the approval of the Secretary of Transportation.

Requested by: Senator Lee, Representatives R. Hunter, McAllister, McLaughlin, Bowie, Lemmond

**DEPARTMENT OF TRANSPORTATION AND DEPARTMENT OF  
CORRECTION TO REPORT ON IMPLEMENTATION OF  
RECOMMENDATIONS OF JOINT LEGISLATIVE TRANSPORTATION  
OVERSIGHT COMMITTEE**

**Sec. 20.10.** The Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Requested by: Senator Lee, Representatives McAllister, McLaughlin, Bowie, Lemmond

**RELOCATION OF CERTAIN SANITARY DISTRICT UTILITIES**

**Sec. 20.12.** The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines:

- (1) that are located within the existing State highway right-of-way;
- (2) that are necessary to be relocated for State highway improvement projects let after July 1, 1993; and
- (3) that are owned by a sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.

**PART 21. DEPARTMENT OF CORRECTION**

Requested by: Senators Odom, Ballance, Representative Holt

**CORRECTION ENTERPRISES PREFERENCE**

**Sec. 21.** The Department of Administration, Division of Purchase and Contracts, shall prepare a written explanation of the purchasing procedures that State agencies and departments must follow in giving a preference to Correction Enterprises products pursuant to G.S. 148-70. The explanation shall be for distribution to all State agencies and departments.

The Department shall provide a report on the explanation prepared pursuant to this section and on goods purchased from Correction Enterprises by State agencies and departments to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House

Appropriations Subcommittees on Justice and Public Safety by August 1, 1994. The Department shall also provide a report on goods purchased from Correction Enterprises by State agencies and departments to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by January 1, 1995.

Requested by: Senators Odom, Ballance, Representative Holt

**DEPARTMENT OF CORRECTION RESERVE FOR SUBSTANCE ABUSE TREATMENT PILOT PROGRAM FOR PAROLEES AND PROBATIONERS**

**Sec. 21.1.** (a) Of the funds appropriated to the Department of Correction for the 1994-95 fiscal year, the sum of five hundred eighty-three thousand dollars (\$583,000) shall be used to establish two positions and to cover associated expenses, including equipment. Of this amount, the sum of four hundred eighty-five thousand eight hundred thirty-four dollars (\$485,834) shall be used to contract with providers of services to parolees and probationers with serious substance abuse histories.

(b) The Department of Correction shall report on the implementation of this pilot program and the expected cost for the 1995-96 fiscal year and future fiscal years to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the Legislative Services Office by January 15, 1995.

Requested by: Representatives Holt, Redwine, Richardson, Senators Odom, Ballance

**USE OF OUT-OF-STATE HOUSING FUNDS**

**Sec. 21.2.** (a) As a result of the court's modification in the Small v. Martin lawsuit, the sum of five million one hundred sixty-four thousand four hundred seventy-three dollars (\$5,164,473) to establish 144 additional positions needed to supervise an additional 800 inmates shall be provided from funds appropriated to the Department of Correction for the out-of-state housing of inmates in Chapter 24 of the Session Laws of the 1994 Extra Session.

(b) Of the funds appropriated to the Department of Correction for the out-of-state housing of inmates in Chapter 24 of the Session Laws of the 1994 Extra Session, the Department shall use up to the sum of two million seven hundred forty-nine thousand two hundred eight-four dollars (\$2,749,284) to (i) establish two positions for the supervision of inmate road squads and work crews and to pay the per diem costs of inmates at prison units not covered by the Small v. Martin lawsuit; and (ii) establish 72 positions to achieve staffing standards and operate new beds at Black Mountain, Caswell, and Sandhills prison units and to provide for supervision of additional inmate road squads at Caswell prison unit.

(c) The Department of Correction shall not use any funds other than those specifically appropriated for out-of-state housing of inmates in Chapter 24 of the Session Laws of the 1994 Extra Session to pay the per diem costs

of inmates housed out-of-state. The availability of out-of-state housing funds shall be reduced by (i) the amount needed to fund local confinement costs for offenders held in contempt for probation violations under G.S. 15A-1344(e1); and (ii) the amount required to comply with subsections (a) and (b) of this section. If the Department of Correction projects that funds will not be sufficient to meet all of its contracts for the out-of-state housing of inmates, the Department shall make the most appropriate use of funds remaining in the out-of-state line item to meet any existing operational needs for the out-of-state housing of inmates.

Requested by: Senators Odom, Ballance

#### DEPARTMENT OF CORRECTION WAREHOUSE REPORT

**Sec. 21.4.** The Department of Correction shall determine the most feasible location for a warehouse for the Department, based upon the distribution of warehouse goods to State correctional facilities, the availability of State-owned land, and the cost of leasing, purchasing, or constructing a warehouse. The Department shall report to the Joint Legislative Commission on Governmental Operations as soon as the determination has been made.

Requested by: Representatives Holt, Redwine, Richardson, Senators Odom, Ballance, Lee, Marshall

#### PRISON PROFITS TO VICTIMS COMPENSATION FUND

**Sec. 21.5.** (a) G.S. 148-2 reads as rewritten:

*"§ 148-2. Prison moneys and earnings.*

(a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the Department of Correction, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(b) All revenues from the sale of articles and commodities manufactured or produced by prison enterprises shall be deposited with the State Treasurer to be kept and maintained as a special revolving working-capital fund designated 'Prison Enterprises Fund.' The Revenue in the Prison Enterprises Fund shall be used for applied first to capital and operating expenditures, including salaries and wages of supervisory personnel, necessary to develop and operate prison industrial and forestry enterprises to provide diversified employment for prisoners, prisoners, and incentive wages for non-Prison Enterprises Inmates. Of the remaining revenue in the Fund, five percent (5%) of the net profits, before expansion costs, shall be credited to the Crime Victims Compensation Fund established in G.S. 15B-23 as soon as practicable after profits have been determined for the previous year, and at the direction ~~When, in the opinion of the Governor, the Prison Enterprises Fund has reached a sum in excess of requirements for these purposes, the excess~~ the remainder shall be used for other purposes within the State prison system or shall be transferred to the general fund as the Governor may direct. General Fund. The provisions of this section shall

not apply to revenues generated from private prison enterprises conducted pursuant to G.S. 148-70 except for lease and rental income.

(c) Notwithstanding G.S. 147-77, Article 6A of Chapter 147 of the General Statutes, or any other provision of law, the Department of Correction may deposit revenue from prison canteens in local banks. The profits from prison canteens shall be deposited with the State Treasurer on a monthly ~~basis~~ basis in a fund denominated as the Correction Inmate Welfare Fund. Once the operating budget for the Correction Inmate Welfare Fund has been met, an amount equal to the funds allocated to each prison unit on a per inmate per year basis shall be credited to the Crime Victims Compensation Fund established in G.S. 15B-23 as soon as practicable after the total amount paid to each unit per inmate per year has been determined."

(b) G.S. 15B-23 reads as rewritten:

"§ 15B-23. *Crime Victims Compensation Fund.*

There is established the Crime Victims Compensation Fund. Revenue in the Crime Victims Compensation Fund includes amounts credited to the Fund under G.S. 148-2 and other funds. Any surplus in the Crime Victims Compensation Fund shall not revert. The Crime Victims Compensation Fund shall be kept on deposit with the State Treasurer, as in the case of other State funds, and may be invested by the State Treasurer in any lawful security for the investment of State money. The Crime Victims Compensation Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

(c) The funds transferred to the Crime Victims Compensation Fund pursuant to this section shall not supplant current or future appropriations by the General Assembly to the Crime Victims Compensation Fund.

Requested by: Senators Odom, Ballance, Representatives Holt, Redwine, Richardson

#### HARRIET'S HOUSE FUNDS

**Sec. 21.6.** Of the funds appropriated from the General Fund to the Department of Correction for the 1994-95 fiscal year, the sum of two hundred thousand dollars (\$200,000) shall be used to support the programs at Harriet's House, a transitional home for female ex-offenders and their children. Harriet's House shall report quarterly to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served and the number of clients who successfully complete the Harriet's House program.

Requested by: Representatives Holt, Redwine, Richardson, Senators Marshall, Odom

#### DEPARTMENT OF CORRECTION PAY LOCAL CONFINEMENT COST OF OFFENDER HELD IN CONTEMPT FOR PROBATION VIOLATION

**Sec. 21.7.** (a) G.S. 15A-1344(e1), as enacted by Section 2 of Chapter 19 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"(e1) Criminal Contempt in Response to Violation. -- If a defendant willfully violates a condition of probation, the court may hold the defendant in criminal contempt as provided in Article 1 of Chapter 5A of the General Statutes. A finding of criminal contempt by the court shall not revoke the probation. If the offender serves a sentence for contempt in a local confinement facility, the Department of Correction shall pay for the confinement at the standard rate set by the General Assembly pursuant to G.S. 148-32.1(a) regardless of whether the offender would be eligible under the terms of that subsection."

(b) The Department of Correction shall comply with the provisions of this section with funds appropriated to the Department for out-of-state housing of inmates in Chapter 24 of the Session Laws of the 1994 Extra Session.

Requested by: Representatives Holt, Redwine, Richardson

#### USE OF OPERATIONAL FUNDS FOR SECURITY AND MEDICAL POSITIONS

**Sec. 21.8.** Section 171 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 171. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this ~~act~~ act and set forth in this section. These funds may not be expended for any other purpose, and may not be expended for additional prison personnel positions until the new facilities are within 90 days of completion, except for certain management and support positions necessary to prepare the facility for opening, as authorized in the budget approved by the General ~~Assembly~~ Assembly, and except for medical positions at the North Carolina Correctional Institution for Women and positions needed for security due to construction at Wayne, Lumberton, Columbus, Piedmont, Brown Creek, Johnston, and Franklin prison units."

#### PART 22. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Representatives Holt, Redwine, Richardson, Wright

#### COMMUNITY POLICING PILOT PROGRAM

**Sec. 22.1.** Of the funds appropriated to the Department of Crime Control and Public Safety for the 1994-95 fiscal year, the sum of two hundred thirty thousand seven hundred ninety dollars (\$230,790) shall be allocated to the Office of the Secretary of Crime Control and Public Safety to implement a pilot program to provide technical assistance to communities in the development of community policing programs in high crime areas. The Secretary shall report by March 1, 1995, to the 1995 General Assembly regarding implementation of the pilot program and on any preliminary findings as to the benefits of the program.

Requested by: Representatives Holt, Fitch, H. Hunter, Redwine, Richardson, Wright



## MULTIJURISDICTIONAL DRUG TASK FORCE FUNDS

**Sec. 22.2.** Of the funds appropriated in this act to the Department of Crime Control and Public Safety, the sum of two hundred fifty thousand dollars (\$250,000) for the 1994-95 fiscal year shall be used as grants to the multijurisdictional drug task forces operating in Beaufort, Bertie, Bladen, Chowan, Columbus, Craven, Cumberland, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Pasquotank, Pender, Perquimans, Pitt, Tyrrell, Vance, Warren, Washington, Wayne, and Wilson Counties. Only local units of government shall be eligible to receive grants which shall be awarded pursuant to guidelines adopted by the Department of Crime Control and Public Safety. A minimum cash match of twenty-five percent (25%) shall be required.

Requested by: Representatives Holt, Baddour, Redwine, Richardson, Wright

## NATIONAL GUARD EDUCATIONAL BENEFIT INCREASE

**Sec. 22.3.** G.S. 127A-193 reads as rewritten:

"§ 127A-193. Benefit.

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) per academic year to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of ~~two thousand dollars (\$2,000)~~, four thousand dollars (\$4,000)."

Requested by: Representatives Holt, Hightower, Senators Odom, Parnell  
REGIONAL RESPONSE TEAMS FOR HAZARDOUS MATERIALS EMERGENCIES

**Sec. 22.4.** (a) Chapter 166A of the General Statutes is amended by designating the existing sections of Chapter 166A as Article 1 with a title to read:

"ARTICLE 1.

"North Carolina Emergency Management Act."

(b) Chapter 166A of the General Statutes is amended by adding a new Article 2 to read:

"ARTICLE 2.

"Hazardous Materials Emergency Response.

"§ 166A-17. Title, purpose.

(a) This Article may be cited as the 'North Carolina Hazardous Materials Emergency Response Act.'

(b) The purpose of this Article is to establish a system of regional response to hazardous materials emergencies in the State to protect the health and safety of its citizens.

"§ 166A-18. Definitions.

As used in this Article:

(a) 'Hazardous materials emergency response team' or 'hazmat team' means an organized group of persons specially trained and equipped to

respond to and control actual or potential leaks or spills of hazardous materials.

(b) 'Hazardous material' means any material defined as a hazardous substance under 29 Code of Federal Regulations § 1910.120(a)(3).

(c) 'Hazardous materials incident' or 'hazardous materials emergency' means an uncontrolled release or threatened release of a hazardous substance requiring outside assistance by a local fire department or hazmat team to contain and control.

(d) 'Regional response team' means a hazmat team under contract with the State to provide response to hazardous materials emergencies occurring outside the hazmat team's local jurisdiction at the direction of the Department of Crime Control and Public Safety, Division of Emergency Management.

(e) 'Secretary' means the Secretary of the Department of Crime Control and Public Safety.

(f) 'Technician-level entry capability' means the capacity of a hazmat team, in terms of training and equipment as specified in 29 Code of Federal Regulations § 1910.120, to respond to a hazardous materials incident requiring affirmative measures, such as patching, plugging, or other action necessary to stop and contain the release of a hazardous substance at its source.

"§ 166A-19. Hazardous materials emergency response program.

(a) The Secretary shall adopt rules establishing a regional response program for hazardous materials emergencies, to be administered by the Division of Emergency Management. To the extent possible, the regional response program shall be coordinated with other emergency planning activities of the State. The regional response program shall include at least six hazmat teams located strategically across the State that are available to provide regional response to hazardous materials incidents requiring technician-level entry capability and 24-hour dispatch and communications capability at the Division of Emergency Management Operations Center. The rules for the program shall include:

- (1) Standards, including training, equipment, and personnel standards required to operate a regional response team with technician-level entry capability.
- (2) Guidelines for the dispatch of a regional response team to a hazardous materials incident.
- (3) Guidelines for the on-site operations of a regional response team.
- (4) Standards for administration of a regional response team, including procedures for reimbursement of response costs.
- (5) Refresher and specialist training for members of regional response teams.
- (6) Procedures for recovering the costs of a response to a hazardous materials incident from persons determined to be responsible for the emergency.
- (7) Procedures for bidding and contracting for the provision of a hazmat team for the regional response program.
- (8) Criteria for evaluating bids for the provision of a hazmat team for regional response.

- (9) Delineation of the roles of the regional response team, local fire department and local public safety personnel, the Division of Emergency Management's area coordinator, and other State agency personnel responding to the scene of a hazardous materials incident.

(b) In developing the program and adopting rules, the Secretary shall consult with the Regional Response Team Advisory Committee established pursuant to G.S. 166A-24.

"§ 166A-20. Contracts; equipment loans.

(a) The Secretary may contract with any unit or units of local government for the provision of a regional response team to implement the regional response program. Contracts are to be let consistent with the bidding and contract standards and procedures adopted pursuant to G.S. 166A-19(a)(7) and (8). In entering into contracts with units of local government, the Secretary may agree to provide:

- (1) A loan of equipment, including a hazmat vehicle, necessary for the provision technician-level entry capability;
  - (2) Reimbursement of personnel costs when a regional response team is authorized by the Department to respond to a hazmat incident, including the cost of call-back personnel;
  - (3) Reimbursement for use of equipment and vehicles owned by the regional response team;
  - (4) Replacement of disposable materials and damaged equipment;
  - (5) Costs of medical surveillance for members of the regional response team, including baseline, maintenance, and exit physicals;
  - (6) Training expenses; and
  - (7) Other provisions agreed to by the Secretary and the regional response team.
- (b) The Secretary shall not agree to provide reimbursement for:
- (1) Costs of clean-up activities, after a spill or leak has been contained;
  - (2) Local response not requiring technician-level entry capability; or
  - (3) Standby time.

(c) Any contract entered into between the Secretary and a unit of local government for the provision of a regional response team shall specify that the members of the regional response team, when performing their duties under the contract, shall not be employees of the State and shall not be entitled to benefits under the Teachers' and State Employees' Retirement System or for the payment by the State of federal social security, employment insurance, or workers' compensation.

(d) Regional response teams that have the use of a State hazmat vehicle may use the vehicle for local purposes. Where a State vehicle is used for purposes other than authorized regional response to a hazardous materials incident, the regional response team shall be liable for repairs or replacements directly attributable to the nonauthorized response.

"§ 166A-21. Immunity of Regional Response Team Personnel.

Members of a regional response team shall be protected from liability under the provisions of G.S. 166A-14(a) while responding to a hazardous

materials incident pursuant to authorization from the Division of Emergency Management.

"§ 166A-22. Right of entry.

A regional response team, when authorized to respond to a release or threatened release of hazardous materials, may enter onto any private or public property on which the release has occurred or on which there is an imminent threat of such release. A regional response team may also enter, under such circumstances, any adjacent or surrounding property in order to respond to the release or threatened release of hazardous material or to monitor, control, and contain the release or perform any other action in mitigation of a hazardous materials incident.

"§ 166A-23. Regional Response Team Advisory Committee.

(a) The Regional Response Team Advisory Committee is created. The Secretary shall appoint the members of the Committee and shall designate the chair. In making appointments, the Secretary shall take into consideration the expertise of the appointees in the management of hazardous materials emergencies. The Secretary shall appoint one representative from:

- (1) The Division of Emergency Management;
- (2) The North Carolina Highway Patrol;
- (3) The Fire and Rescue Commission;
- (4) The Department of Environment, Health, and Natural Resources;
- (5) The Department of Transportation;
- (6) The Department of Agriculture;
- (7) The Chemical Industry Council of North Carolina;
- (8) The N.C. Association of Hazardous Materials Responders;
- (9) Each regional response team.

In addition to the persons listed above, the Secretary shall appoint to the Advisory Committee three persons designated jointly by the North Carolina Fire Chiefs Association and the North Carolina Firemen's Association.

(b) The Advisory Committee shall meet on the call of the chair, or at the request of the Secretary; provided that the Committee shall meet no less than once every three months. The Department of Crime Control and Public Safety shall provide space for the Advisory Committee to meet. The Department also shall provide the Advisory Committee with necessary support staff and supplies to enable the Committee to carry out its duties in an effective manner.

(c) Members of the Advisory Committee shall serve without pay, but shall receive travel allowance, lodging, subsistence, and per diem as provided by G.S. 138-5.

(d) The Regional Response Team Advisory Committee shall advise the Secretary on the establishment of the program for regional response to hazardous materials emergencies in the State. The Committee shall also evaluate and advise the Secretary of the need for additional regional response teams to serve the State.

"§ 166A-24. Action for the recovery of costs of hazardous materials emergency response.

A person who causes the release of a hazardous material requiring the activation of a regional response team shall be liable for all reasonable costs incurred by the regional response team in responding to and mitigating the

incident. The Secretary shall invoice the person liable for the hazardous materials release, and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred.

"§ 166A-25. Hazardous Materials Emergency Response Fund.

There is established in the Department of Crime Control and Public Safety a fund for those monies collected pursuant to G.S. 166A-24. The Fund is also authorized to accept any gift, grant, or donation of money or property to facilitate the establishment and operation of the regional response system."

(c) This section is effective upon ratification.

## PART 23. DEPARTMENT OF JUSTICE

Requested by: Senators Odom, Ballance, Representative Holt

### USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

Sec. 23. Section 204 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 204. (a) Assets transferred to the Department of Justice during the 1993-95 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of that Department and shall result in an increase of law enforcement resources for the Department. Assets transferred to the Department of Crime Control and Public Safety during the 1993-95 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of that Department and shall result in an increase of law enforcement resources for the Department. The Departments shall report to the Joint Legislative Commission on Governmental Operations upon the receipt of these assets and, before using these assets, shall report the intended use of these assets and the departmental priorities on which the assets may be expended.

The General Assembly finds that the use of these assets for new personnel positions, new projects, the acquisition of real property, repair of buildings where such repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods; therefore, the Department of Justice and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly, except that during the 1993-95 biennium:

- (1) The Department of Crime Control and Public Safety may use an amount not to exceed one hundred seventeen thousand one hundred dollars (\$117,100) of these assets for the purpose of building a helicopter hangar; and
- (2) The Department of Justice may use an amount not to exceed seventy-five thousand dollars (\$75,000) of these assets for the purpose of constructing a pistol range tower to house the computerized target system located at the Justice Academy.



(b) This section does not apply to the extent that it prevents North Carolina law enforcement agencies from receiving funds from the United States Department of Justice pursuant to 19 U.S.C. § 1616a."

Requested by: Senators Odom, Ballance, Representative Holt

#### CENTRALIZED UTILIZATION OF LEGAL PUBLICATIONS

**Sec. 23.1.** With the technical assistance of the Office of State Budget and Management, the Department of Justice shall conduct a cost analysis, formulate an implementation plan, and develop a funding recommendation for each of the following recommendations of the Office of State Budget and Management contained in the report of April 1994 on the Centralized Utilization of Legal Publications:

- (1) The use of legal publications available on CD-ROM software and hardware; and
- (2) The feasibility of developing a legal resource and legal research network.

The Employment Security Commission, Industrial Commission, Department of Labor, Department of Revenue, State Library, SIPS, and any other State agency, department, or institution that maintains a legal library shall cooperate with the Department of Justice in the determination of the feasibility of developing a legal resource and legal research network.

The Department of Justice shall report by February 1, 1995, to the 1995 General Assembly its cost analysis, implementation plan, and funding recommendations by submitting a copy of the report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division.

Requested by: Representatives Holt, Redwine, Richardson, Senators Odom, Ballance

#### DEPARTMENT OF JUSTICE FEDERAL GRANT MATCHING FUNDS

**Sec. 23.2.** (a) Of the funds appropriated to the Department of Justice for the 1994-95 fiscal year, the sum of twenty-five thousand two hundred twenty-eight dollars (\$25,228) may be used to match the federal grant for the Child Victim's Assistance Project within the Citizens Rights Division. In the event that the Department of Justice does not receive federal grant funds for this specific grant, then the matching funds authorized by this section for that purpose shall not be expended.

(b) Of the funds appropriated to the Department of Justice for the 1994-95 fiscal year, the sum of one hundred sixty-six thousand six hundred sixty-one dollars (\$166,661) may be used by the State Bureau of Investigation to match federal funds for the purchase of a computerized system to match bullets and weapons. In the event that the Department of Justice does not receive federal grant funds for this purpose, then the funds authorized by this section for matching purposes shall not be expended.

Requested by: Senators Odom, Ballance, Conder

#### CAPITAL MURDER STUDY

**Sec. 23.3.** The Department of Justice, in consultation with the Administrative Office of the Courts, shall study methods of reducing the

costs and the length of time associated with capital murder cases, and shall report its findings and any recommendations to the 1995 General Assembly.

Requested by: Representative Holt

#### REVERSION OF CERTAIN INSURANCE SETTLEMENT PROCEEDS

**Sec. 23.5.** Any funds received by the Department of Justice in settlement of insurance claims arising from damage to the Blue Bell building at the North Carolina Justice Academy shall not be expended by the Department and shall revert to the General Fund.

### PART 24. JUDICIAL DEPARTMENT

Requested by: Senators Odom, Ballance, Representative Holt

#### FORSYTH WARRANT CLERKS BECOME MAGISTRATES

**Sec. 24.** (a) The Administrative Office of the Courts may transfer 11 positions established within budget program fund 1260, "Clerk of Superior Court", in the certified budget for the 1993-95 biennium to budget program fund 1240, "District Court". These 11 positions shall be deleted from the positions allocated to the office of the Clerk of Superior Court of Forsyth County pursuant to Section 9 of Chapter 881 of the 1983 Session Laws, and shall be added to the magistrate positions allocated to Forsyth County pursuant to G.S. 7A-171, but shall not increase the maximum number of magistrates authorized for Forsyth County in G.S. 7A-133.

(b) Each magistrate position created in Forsyth County as a result of this section shall be filled pursuant to G.S. 7A-171 for an initial term ending December 31, 1994, as if a vacancy had occurred in the position on the effective date of this act. A successor in each position shall be appointed as provided in G.S. 7A-171 for a full term beginning January 1, 1995.

(c) The salary of each person who serves as a magistrate in Forsyth County in a position transferred pursuant to this section shall be determined under G.S. 7A-177.1, by including in the number of years the person has served as a magistrate, the number of years that the person has served as an assistant or Deputy Clerk of Superior Court for Forsyth County in a warrant clerk position.

(d) From funds appropriated to the Judicial Department in the certified budget for the 1994-95 fiscal year, the Administrative Office of the Courts may transfer within its budget up to forty-one thousand four hundred fifty-nine dollars (\$41,459) to pay additional salary and benefits resulting from the enactment of this section.

Requested by: Representatives Holt, Redwine, Richardson, Senators Odom, Ballance

#### COMMUNITY PENALTIES PROGRAMS

**Sec. 24.1.** (a) Of the funds appropriated from the General Fund to the Judicial Department for the 1994-95 fiscal year to conduct the community penalties programs, the sum of three million five hundred thirteen thousand six hundred fifty-eight dollars (\$3,513,658) may be allocated by the Judicial Department in any amount among existing community penalties programs, including any State-operated programs, or

may be used to establish new State-operated community penalties programs, notwithstanding the provisions of G.S. 7A-771 and G.S. 7A-772.

(b) The Judicial Department shall report annually to the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division on the administrative expenditures of the community penalties programs. The Judicial Department shall report quarterly to the Joint Legislative Commission on Governmental Operations on any elimination or reduction of funding for existing community penalties programs.

Requested by: Representatives Holt, Redwine, Richardson, Senators Odom, Ballance

#### STATE-RUN COMMUNITY PENALTIES PROGRAMS

**Sec. 24.2.** The Director of the Administrative Office of the Courts may establish local community penalties programs and appoint staff the Director considers necessary. These personnel may serve as full-time or part-time State employees or, alternatively, their activities may be provided on a contractual basis when determined appropriate by the Director. The contracts shall be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program, including rules that allow plans to be presented at the request of the sentencing judge. Funds appropriated by the General Assembly for the establishment and maintenance of community penalties programs under this Article shall be administered by the Administrative Office of the Courts. Any contract entered into under the authority of this section shall expire not later than June 30, 1995.

Requested by: Senators Odom, Ballance, Daniel

#### CHILDREN'S LAW CENTER FUNDS

**Sec. 24.5.** Of the funds appropriated from the General Fund to the Judicial Department, the sum of one hundred thousand dollars (\$100,000) shall be used to assist the Children's Law Center, a private, nonprofit corporation that provides comprehensive, quality legal representation and advocacy for children involved in court or administrative proceedings.

Requested by: Representatives Holt, Redwine, Richardson, Senators Odom, Ballance

#### PITT REGIONAL MEDIATION CENTER FUNDS

**Sec. 24.6.** (a) Section 15 of Chapter 591 of the 1993 Session Laws is amended by deleting "Section 220.2" and substituting "Section 200.2".

(b) Section 200.2 of Chapter 321 of the 1993 Session Laws, as rewritten by Section 15 of Chapter 591 of the 1993 Session Laws, reads as rewritten:

"Sec. 200.2. Of the funds appropriated to the Judicial Department from the General Fund for the 1993-95 biennium, the sum of forty thousand dollars (\$40,000) for the 1993-94 fiscal year and the sum of forty thousand dollars (\$40,000) for the 1994-95 fiscal year may be used for The Mediation Center of Pitt County, Inc., a dispute settlement center in Pitt County, to

establish a regional mediation and dispute settlement center to serve Eastern North Carolina. Funding for the Mediation Center of Pitt County, Inc., shall become part of the Judicial Department's continuation budget."

Requested by: Senators Odom, Ballance, Representative Holt

#### EXTEND CERTAIN SPECIAL SUPERIOR COURT JUDGE TERMS

**Sec. 24.7.** Notwithstanding G.S. 7A-45, G.S. 7A-45.1, Section 7 of Chapter 509 of the 1987 Session Laws, or any other provision of law, if any special superior court judge who is holding office on the effective date of this act first took office as an appointed or elected regular or special superior court judge in the calendar year 1986, the term of that judge is extended through December 31, 1998.

Requested by: Representatives Holt, Redwine, Richardson

#### STUDY DRUG TREATMENT COURT PROGRAM

**Sec. 24.8.** The Administrative Office of the Courts, in consultation with the Task Force on Substance Abuse, shall study the costs and benefits of establishing pilot drug treatment court programs. The study shall include a determination of the appropriate model for operating a pilot drug treatment court program. The Administrative Office of the Courts shall report its findings and any recommendations to the 1995 General Assembly by March 1, 1995. The sum of eight hundred thousand dollars (\$800,000) placed in a reserve created in Section 41 of Chapter 24 of the Session Laws of the 1994 Extra Session shall not revert but shall remain available for allocation by the 1995 General Assembly.

Requested by: Representatives Holt, Redwine, Richardson

#### REPORT ON DISPUTE SETTLEMENT CENTERS

**Sec. 24.8.** (a) All local dispute settlement centers currently receiving State funds shall report annually to the Judicial Department on the program's funding and activities, including:

- (1) Types of dispute settlement services provided;
- (2) Clients receiving each type of dispute settlement service;
- (3) Number and type of referrals received, cases actually mediated, cases resolved in mediation, and total clients served in the cases mediated;
- (4) Total program funding and funding sources;
- (5) Itemization of the use of funds, including operating expenses and personnel;
- (6) Itemization of the use of State funds;
- (7) Level of volunteer activity; and
- (8) Identification of future service demands and budget requirements.

The Judicial Department shall compile and summarize the information provided pursuant to this subsection and shall provide the information to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year.

(b) Each local dispute settlement center requesting State funds for the first time shall provide the General Assembly with (i) the information

enumerated in subsection (a) of this section, or projections where historical data is not available, as well as a detailed statement justifying the need for State funding, and (ii) certification that at least fifty percent (50%) of total funding for the first fiscal year in which funding is requested shall come from non-State sources and, if funding is requested for a second fiscal year, certification that at least sixty percent (60%) of total funding for the second fiscal year shall come from non-State sources.

(c) Each local dispute settlement center requesting an expansion of State funding shall provide the General Assembly with (i) the information enumerated in subsection (a) of this section, or projections where historical data is not available, as well as a detailed statement justifying the need for the expansion of State funding, and (ii) certification that at least sixty percent (60%) of total funding shall come from non-State sources.

Requested by: Representatives Holt, R. Hunter, Redwine, Richardson  
 AUTHORIZE ADDITIONAL MAGISTRATES IN CATAWBA,  
 MCDOWELL, AND IREDELL COUNTIES

Sec. 24.9. G.S. 7A-133 reads as rewritten:

"§ 7A-133. *Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.*

Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Additional	
			Magistrates	Seats of
			Min.-Max.	Court
1	4	Camden	1	2
		Chowan	2	3
		Currituck	1	2
		Dare	3	8
		Gates	2	3
		Pasquotank	3	4
		Perquimans	2	3
		Martin	5	8
		Beaufort	4	8
2	3	Tyrrell	1	3
		Hyde	2	4
		Washington	3	4
		Pitt	10	12
		Farmville		
3A	3	Ayden		
		Havelock		
3B	4	Craven	7	10
		Pamlico	2	3
		Carteret	5	8
4	6	Sampson	6	8
		Duplin	9	11
		Jones	2	3
		Onslow	8	14
		New Hanover	6	11



6A	2	Pender	4	6	Roanoke Rapids, Scotland Neck
		Halifax	9	14	
6B	2	Northampton	5	6	
		Bertie	4	5	
		Hertford	5	6	
7	6	Nash	7	10	Rocky Mount
		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	6	Wayne	5	11	Mount Olive
		Greene	2	4	
		Lenoir	4	10	La Grange
9	4	Granville	3	7	
		Vance	3	5	
		Warren	3	4	
		Franklin	3	6	
9A	2	Person	3	4	
10	12	Caswell	2	5	Apex, Wendell, Fuquay- Varina, Wake Forest
		Wake	12	20	
11	6	Harnett	7	11	Dunn
		Johnston	10	12	Benson, Clayton and Selma
12	7	Lee	4	6	
13	4	Cumberland	10	17	Tabor City
		Bladen	4	6	
		Brunswick	4	7	
14	5	Columbus	6	8	
		Durham	8	12	
15A	3	Alamance	7	10	Burlington
15B	3	Orange	4	11	Chapel Hill
		Chatham	3	8	Siler City
16A	2	Scotland	3	5	
		Hoke	4	5	
16B	5	Robeson	8	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
17A	2	Rockingham	4	9	Reidsville, Eden, Madison
17B	3	Stokes	2	5	

		Surry	5	8	Mt. Airy
18	11	Guilford	20	26	High Point
19A	2	Cabarrus	5	9	Kannapolis
19B	3	Montgomery	2	4	
		Randolph	5	8	Liberty
19C	2	Rowan	5	10	
20	6	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	6	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	<del>8</del> 9	Mooresville
23	3	Alleghany	1	2	
		Ashe	3	4	
		Wilkes	4	6	
		Yadkin	3	5	
24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	7	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	<del>9</del> 10	Hickory
26	13	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	4	Cleveland	5	8	
		Lincoln	4	6	
28	5	Buncombe	6	15	
29	4	Henderson	4	6	
		McDowell	3	<del>4</del> 5	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	4	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3."	

Requested by:  
Richardson

Representatives G. Miller, Michaux, Holt, Redwine,

**CORRECT JUDICIAL TERM**

**Sec. 24.12.** (a) If the superior court judge holding office on June 1, 1994 whose successor's term is to begin July 1, 1995 under G.S. 7A-41(d)(25) is not a regular superior court judge on January 1, 1995, then the succeeding term begins January 1, 1995, and the remainder of this section does not apply.

(b) If the superior court judge holding office on June 1, 1994 whose successor's term is to begin July 1, 1995 under G.S. 7A-41(d)(25) ceases to be a regular superior court judge between January 1, 1995 and July 1, 1995, the term of that judge's successor begins on the date that judge ceases to be a regular superior court judge.

(c) If in superior court district 14B only one of the three persons elected for that district in the 1994 general election is a special superior court judge on January 1, 1995, then that person is the successor to the judge whose term was determined by G.S. 7A-41(d)(25), but in such case the successor's service as a special superior court judge shall be considered service as a regular resident superior court judge under G.S. 7A-41.1(b)(2).

(d) If subsection (c) of this section does not apply, in superior court district 14B the State Board of Elections shall choose by lot among those persons elected in 1994 who were not regular superior court judges, and the person chosen by lot is the successor to the judge whose term was determined by G.S. 7A-41(d)(25).

**PART 25. DEPARTMENT OF HUMAN RESOURCES**

Requested by: Senators Richardson, Walker, Representatives Nye, Easterling

**MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES PROVIDERS/MEDICAID RECEIPTS**

**Sec. 25.** The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources shall initiate efforts to enable service providers to realize additional Medicaid receipts for services provided through the Willie M. and Thomas S. programs and shall present the results of their efforts to the Human Resources Appropriations Subcommittees by March 1, 1995.

Requested by: Senators Richardson, Walker, Representatives Easterling, Nye

**PRIVATE AGENCY UNIFORM COST FINDING REQUIREMENT**

**Sec. 25.1.** To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources may require a private agency that provides services under contract with two or more area programs, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with G.S. 122C-143.2(a) and G.S. 122C-147.2. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding.

Requested by: Senators Richardson, Walker, Representatives Easterling, Nye  
THOMAS S.

Sec. 25.3. Section 209 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 209. (a) Funds appropriated to the Department of Human Resources in this act for the 1993-94 fiscal year and the 1994-95 fiscal year for members of the Thomas S. Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

- (1) Adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a State psychiatric hospital on or after March 22, 1984, and who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members;
- (2) Adults with mental retardation who have a documented history of State psychiatric hospital admissions regardless of admission date and who, without funding support, have a good probability of being readmitted to a State psychiatric hospital; ~~or~~
- (3) Adults with mental retardation who have never been admitted to a State psychiatric hospital but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment and who, without funding support, have a good probability of being admitted to a State psychiatric hospital; ~~hospital; or~~
- (4) Adults who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective class members and have yet to be confirmed as class members, who currently reside in the community, and who have a good probability of being admitted to a facility licensed as a 'home for the aged and disabled'.

No more than five percent (5%) of the funds appropriated in this act for the Thomas S. program shall be used for clients meeting subdivisions ~~(2) or (3)~~ (2), (3), or (4) of this subsection.

(b) To ensure that Thomas S. Class members are appropriately served, no State funds shall be expended on placement and services for Thomas S. Class members except:

- (1) Funds specifically appropriated by the General Assembly for the placement and services of Thomas S. Class members; and
- (2) Funds for placement and services for which Thomas S. Class members are otherwise eligible.

(c) The Department of Human Resources shall develop and implement during the 1993-94 fiscal year a prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary.

(d) Reporting requirements. The Department of Human Resources shall submit by April 1 of each fiscal year a report to the General Assembly on the progress achieved in serving members and prospective members of the Thomas S. Class. The report shall include the following:

- (1) The number of Thomas S. clients confirmed as Class members;
- (2) The number of prospective Class members evaluated;
- (3) The number of prospective Class members awaiting evaluation;
- (4) The number of Class members or prospective class members added in the preceding 12 months due to their admission to a State psychiatric hospital;
- (5) A description of the types of treatment services provided to Class members; and
- (6) An analysis of the use of funds appropriated for the Class.

(e) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing minimally adequate services to members of the Class identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, or does not show a willingness to do so, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of these programs."

Requested by: Senators Richardson, Walker, Representatives Nye, Easterling

#### CHANGE IN PLANNING AND PILOT IMPLEMENTATION OF AN INTEGRATED FUNDING APPROACH FOR MENTAL HEALTH/SUBSTANCE ABUSE INSTITUTIONAL SERVICES

Sec. 25.4. Section 218 of Chapter 321 of the 1993 Session Laws reads as rewritten:

~~"Sec. 218. The Department of Human Resources shall develop and implement a plan during the 1993-95 fiscal biennium to pilot-test an integrated funding system for mental health/substance abuse institutional services, involving one regional psychiatric hospital, one regional alcohol and drug abuse treatment center, and the area mental health, developmental disabilities, and substance abuse programs using these facilities. The Department may use funds that become available to it through gifts, federal or private grants, receipts from federal programs, or any other source to support the planning and implementation of this pilot program.~~

~~The Department shall present a written report to the House and Senate Human Resources Appropriations Subcommittees by May 1, 1994, describing the results of its planning activities, the proposed schedule and cost for implementation of the integrated funding system and any proposed legislation needed to implement the plan. The Department shall submit a written report to these Subcommittees by May 1, 1995, describing the results of the implementation of the integrated funding system.~~

The Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall present a written report on a UNIFIED SYSTEM OF SERVICES to the Human Resources Appropriations Subcommittees by March 1, 1995. The report shall describe the UNIFIED SYSTEM OF SERVICES using an integrated



funding stream to provide a practical-needs-based approach to the use of limited resources within the Mental Health, Developmental Disabilities, and Substance Abuse Services System and shall include a proposal for a pilot test of the UNIFIED SYSTEM OF SERVICES in the North Central Region, including an estimation of the cost of implementing the pilot test. The UNIFIED SYSTEM OF SERVICES shall focus on improvement to the quality and continuity of client care and shall include changes in budget or personnel policies or practices necessary to implement a unified system of services. These changes shall be based on consultation with the Office of State Budget and Management and the Office of State Personnel."

Requested by: Senators Richardson, Walker, Representatives Nye, Easterling

#### NONSUPPLANTING OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FUNDS

Sec. 25.5. The Department of Human Resources shall ensure that counties do not reduce county appropriations and expenditures for area mental health, developmental disabilities, and substance abuse authorities because the authorities have received additional State appropriations for services.

Requested by: Senator Daniel, Representatives Nye, Easterling

DOMICILIARY HOMES/STAFFING ISSUES

Sec. 25.6. The Department of Human Resources shall study the fiscal impact for all Homes for the Aged and Family Care Homes for appropriate staffing, staff turnover ratios, wages and benefits, staff training, and abilities for facilities to operate within existing State and federal law and regulations, according to size and type of facility.

The Department shall submit a report of its findings to the 1995 General Assembly and to the Fiscal Research Division of the Legislative Services Office by February 1, 1995.

Requested by: Senators Richardson, Walker, Representatives Nye, Easterling

#### USE OF DETENTION CENTER CONSTRUCTION RESERVE

Sec. 25.7. The Department of Human Resources, Division of Youth Services, shall use the one million six hundred thousand dollars (\$1,600,000) placed in a reserve for detention center construction in Section 67 of Chapter 24 of the Session Laws of the 1994 Extra Session, to construct a 24-bed detention center in Wake County.

Requested by: Senator Richardson, Walker, Representatives Easterling, Nye

#### EMERGENCY ASSISTANCE CLARIFICATION

Sec. 25.8. (a) Effective June 30, 1994, G.S. 108A-39.1 reads as rewritten:

*"§ 108A-39.1. AFDC Emergency Assistance Program.*

The Social Services Commission shall adopt rules to implement cash assistance and services components of the Aid to Families with Dependent

Children-Emergency Assistance (AFDC-EA) Program. Effective November 1, 1986, the Department of Human Resources, Division of Social Services, shall provide emergency cash assistance to families whose family income does not exceed one hundred ten percent (110%) of the current federal poverty level as established by the U. S. Secretary of Health and Human Services and published annually in the Federal Register. Annual program benefits cash assistance may shall not exceed five hundred dollars (\$500.00), three hundred dollars (\$300.00). Funding State appropriations made for the non-federal nonfederal share of Emergency Assistance services and cash benefits shall be shared at not exceed a rate of fifty percent (50%) State participation and fifty percent (50%) county participation, fifty percent (50%) of the nonfederal share. For cash benefits authorized by any agency, the nonfederal share of the benefit shall be paid at a rate of fifty percent (50%) State funds and fifty percent (50%) county or other local funds. For cash benefits authorized by any State or local agency other than a county department of social services, the Department of Human Resources may assess the county for fifty percent (50%) of the nonfederal share of cash benefits authorized. For services benefits authorized by any agency, the nonfederal share of the benefit shall be paid by that agency entirely from county appropriations or other available public or private funds. Federal reimbursements earned through participation in this Program shall be paid to the participants in proportion to their payment of the nonfederal share."

(b) Section 232 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 232. The Division of Social Services, Department of Human Resources, shall not expend more State funds than are appropriated for Emergency Assistance the cash assistance component of the Emergency Assistance Program by this act, for the 1993-95 fiscal biennium. Within this limit, Emergency Assistance cash benefits shall not exceed three hundred dollars (\$300.00) per year per family, payable over a 30-day period. After this 30-day period, Emergency Assistance cash benefits are not available to that family until 12 months have elapsed from the initial authorization date. The family may have no more than a total of three hundred dollars (\$300.00) in liquid assets in order to qualify for any Emergency Assistance the cash assistance component of the Emergency Assistance Program pursuant to this section.

It is the intent of the General Assembly that these Emergency Assistance funds cash benefits under the Emergency Assistance Program shall only be used to provide assistance to persons to alleviate an emergency. In evaluating whether an emergency exists, the county departments of social services agency receiving the application shall apply prudent judgment to evaluate each emergency on its own merits. Prudent judgment will permit departments of social services the agency to consider whether the client created the emergency and whether the assistance will resolve the emergency."

Requested by: Senators Richardson, Walker, Winner of Mecklenburg, Representatives Nye, Easterling,

**EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES LOCAL PARTNERSHIP FUNDING FOR ADMINISTRATIVE COSTS**

**Sec. 25.9.** The Secretary of Human Resources may allow local partnerships receiving funds for Early Childhood Education and Development Initiatives to use up to five percent (5%) or up to one hundred thousand dollars (100,000) of their total allocation, whichever is greater, to fund the staff and administrative support for local partnership board activities if the local partnership demonstrates that this additional administrative funding is needed.

Requested by: Senators Richardson, Walker, Representatives Nye, Easterling

**CHILD WELFARE SYSTEM STUDY**

**Sec. 25.10.** Of the funds appropriated in this act to the Department of Human Resources, Office of the Secretary, the sum of one hundred fifty thousand dollars (\$150,000) shall be used to contract for an independent, outside consultant to conduct a comprehensive study of the child welfare system. The study shall include the following:

- (1) A description of the current child welfare system;
- (2) An identification of the strengths and weaknesses of the current system;
- (3) A review of the current funding of the system, with emphasis on State and local responsibilities;
- (4) Recommendations on how to improve and refine the system, with emphasis on addressing the comprehensive needs of the children and families being served;
- (5) Options for future policy discussions, with emphasis on State and local funding responsibilities; and
- (6) Recommendations on the development of a statewide reporting system.

The Department shall report the results of this study to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by February 15, 1995.

Requested by: Senators Richardson, Walker, Representatives Easterling, Nye, Diamont

**FOSTER CARE AND ADOPTIONS TRAINING**

**Sec. 25.11.** Funds appropriated to the Department of Human Resources, Division of Social Services, in this act, in the amount of one hundred eighty-one thousand two hundred seventy dollars (\$181,270), shall be used to establish an in-house training component to provide a mandated minimum of 30 hours of preservice training for foster care parents and 84 hours for foster care workers and adoption care workers and a mandated minimum of 10 hours of continuing education for all foster care parents and 18 hours for foster care workers and adoption care workers.

Requested by: Senators Richardson, Walker, Representatives Nye, Easterling, Diamont

**FOSTER CARE ASSESSMENT TOOL**

**Sec. 25.12.** Funds appropriated to the Department of Human Resources, Division of Social Services, in this act, in the amount of fifteen thousand one hundred sixty-seven dollars (\$15,167) shall be used to purchase the Foster and Adoptive Recruitment and Retention, A Guide to Local Agency Assessment, an ongoing assessment tool to be used to study, develop, and implement a statewide recruitment and retention plan.

Requested by: Senators Richardson, Walker, Harris, Representatives Nye, Easterling, Diamont

**MEDICAID COVERAGE FOR ELDERLY, BLIND, AND DISABLED**

**Sec. 25.13.** Effective January 1, 1995, the Department of Human Resources, Division of Medical Assistance, shall provide Medicaid coverage to all elderly, blind, and disabled people who receive Supplemental Security Income (SSI).

Requested by: Senators Richardson, Walker, Representatives Easterling, Nye

**MEDICAID REPORTING REQUIREMENTS**

**Sec. 25.14.** The Department of Human Resources, Division of Medical Assistance, shall submit a monthly status report on expenditures for acute care and long-term care services to the Fiscal Research Division. This report shall include an analysis of budgeted versus actual experience for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal Research Division no later than the third Thursday of the month.

Requested by: Senators Richardson, Walker, Harris, Representatives Easterling, Nye, Diamont

**CHANGE IN MEDICAID COVERAGE TO PREGNANT WOMEN AND TO CHILDREN**

**Sec. 25.16.** Subsection (l) of Section 222 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(l) The Department of Human Resources shall provide coverage to pregnant women and to children according to the following schedule:

- (1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines, as revised each April 1 shall be covered for Medicaid benefits;
- (2) Infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1, shall be covered for Medicaid benefits;
- (3) Children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits; and

- (4) Children aged 6 through 18 ~~who were born after September 30, 1983,~~ with family incomes equal to or less than the federal poverty guidelines, as revised each April 1, shall be covered for Medicaid benefits."

Requested by: Representatives Nye, Easterling, Dickson, Esposito, Senator Richardson

#### WILLIE M. RULES

**Sec. 25.17.** Section 208 of Chapter 321 of the 1993 Session Laws is amended by adding the following new subsection to read:

"(j) The Secretary of the Department of Human Resources shall adopt rules to be followed in the provision of services for disabled, violent, and assaultive children who have not reached their eighteenth birthday. These rules shall allow for the continuation of services to any child the Secretary determines is being appropriately served until the end of the fiscal year in which the child reaches the age of 18 or until six months after the child reaches the age of 18, whichever period is longer."

Requested by: Representatives Nye, Easterling, Dickson, Esposito, Senators Richardson, Walker

#### CLIENT SERVICES MONITORING

**Sec. 25.18.** The Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop and implement a system of monitoring and control for client services. This system shall ascertain whether services are provided in a timely manner. Notwithstanding any other provisions of law, the Division shall withhold Area Mental Health Agencies' administrative funds until services are provided in a timely manner.

Requested by: Representatives Nye, Easterling, Esposito, Dickson, Senators Richardson, Walker

#### 1993 COUNSELING ACT CORRECTION

**Sec. 25.19.** G.S. 90-338, as amended by Section 3 of Chapter 685 of the 1993 Session Laws, Regular Session 1994, reads as rewritten:

*"§ 90-338. Exemptions.*

Applicants holding certificates of registration as Registered ~~practicing~~ Practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of G.S. 90-336(b). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselors and shall be licensed upon passing the Board examination ~~or~~ and meeting the experience requirements:

- (1) An applicant who was engaged in the practice of counseling before July 1, 1993.
- (2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited



institution, provided the applicant was enrolled in the masters program prior to July 1, 1994."

Requested by: Senators Richardson, Walker, Harris, Representatives Nye, Easterling, Alexander, H. Hunter

#### COALITION 2001 FUNDS

**Sec. 25.20.** The sum of six million dollars (\$6,000,000) appropriated in this act to the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services for the capital needs of mental health, developmental disabilities, and substance abuse services recommended by Coalition 2001 shall be allocated as follows:

- (1) \$3,600,000 for community area mental health, developmental disabilities, and substance abuse services capital needs.

No area program shall receive more than ten percent (10%) of the total funds appropriated in this fiscal year for area program capital needs.

At least ten percent (10%) of the capital funds shall be awarded by the Department of Human Resources to area programs for projects in counties that fall within the last quartile of either per capita income, according to the most recent North Carolina Data System Rankings or of property valuation, according to the most recent North Carolina Department of Revenue rankings. The Department shall not require a local match for these counties. The Department shall require a dollar-for-dollar local match for capital funds awarded for projects in all other counties. Capital in-kind contributions from area programs or counties shall be considered in meeting the local matching requirement. The Department shall determine acceptable requirements for determining sources of allowable matching funds, whether cash or in-kind.

The Department may also allocate a portion of this three million six hundred thousand dollars (\$3,600,000) to the Center for Community Self-Help, a local private, nonprofit corporation, to enable the Center to establish a revolving loan fund. The Center shall use funds from the revolving loan fund, in accordance with guidelines established by the Secretary of the Department of Human Resources, to leverage additional funds to meet the capital needs of the area mental health authorities. The Department shall report any such proposed allocation to the Center, to the Joint Legislative Commission on Governmental Operations, and to the House of Representatives and the Senate Human Resources Subcommittees on Appropriations prior to the allocation.

All area program capital grants are subject to the Department of Human Resources' approval of the grant application;

- (2) \$1,020,000 for construction and renovation of Developmental Day Centers;
- (3) \$600,000 for construction and renovation of vocational rehabilitation facilities;

- (4) \$120,000 for implementation of three community rehabilitation pilot projects to be selected by the North Carolina Association of Rehabilitation Facilities;
- (5) \$240,000 for supported living projects of the Association for Retarded Citizens and United Cerebral Palsy, Inc.; and
- (6) \$420,000 for local assistive technology and a housing loaner fund to be administered through the Community Living Association.

Requested by: Representatives Nye, Easterling, Esposito, Dickson, Senators Richardson, Walker

#### DETERMINATION OF BUDGETARY IMPACT OF ADDITIONAL BEDS IN DOMICILIARY CARE FACILITIES

**Sec. 25.22.** Pursuant to G.S. 131E-177(4), in order to determine the budgetary impact of additional beds in domiciliary care facilities, the Department of Human Resources shall, by January 1, 1996, develop policy, criteria, and standards for planning, conduct inventories, and make determinations of need for health services facilities, domiciliary care facilities, and any other assisted living arrangements subject to any State licensing requirements.

The Department shall report on its progress in implementing this section to the 1995 General Assembly by March 15, 1995.

The plans and need determinations shall not be included in the State Medical Facilities Plan but shall be used to assist the General Assembly in determining the budgetary impact of additional beds in domiciliary care facilities.

Requested by: Representatives Easterling, Nye, Dickson, Esposito, Senators Richardson, Walker

#### PILOT SUBSIDY FOR DOMICILIARY HOMES FOR SERVICES TO DEVELOPMENTALLY DISABLED RESIDENTS REPORTING EXTENDED

**Sec. 25.23.** Section 241 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 241. Notwithstanding the provisions of G.S. 143-23, the Secretary of Human Resources, with the approval of the Office of State Budget and Management, may use, to the extent possible, any funds appropriated or otherwise available to the Department in the 1993-94 fiscal year to conduct a pilot of a subsidy to homes for the aged and disabled and family care homes to support the provisions of habilitative and related services needed by developmentally disabled persons who reside there. The Department shall present the results of the pilot to the General Assembly by ~~July 1, 1994.~~ April 15, 1995."

Requested by: Representatives Easterling, Nye, Esposito, Dickson, Senators Richardson, Walker

#### DEVELOPMENT OF RATE-SETTING METHODOLOGY FOR DOMICILIARY CARE FACILITIES CONTINUED/RECOMMENDATIONS ON STANDARDS, MONITORING

**Sec. 25.24.** The Department of Human Resources shall continue development of the rate-setting methodology for domiciliary care facilities proposed by the Department in the report made to the General Assembly in accordance with the requirements of Section 240 of Chapter 321 of the 1993 Session Laws. The final plan shall include the recommended maximum payment rate for each category of facility, and assessment of the adequacy of the existing standards for domiciliary facilities, the adequacy of the monitoring of these standards and recommendations regarding any needed changes in standards or their monitoring. The final plan shall be submitted to the 1995 General Assembly and to the Fiscal Research Division by February 1, 1995.

Requested by: Representatives Nye, Easterling, Dickson, Esposito, Senators Richardson, Walker

#### DOMICILIARY CARE REIMBURSEMENT RATE INCREASE

**Sec. 25.25.** Section 239 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 239. (a) Effective July 1, 1993, the maximum monthly rate for residents in domiciliary care facilities shall be nine hundred thirty-eight dollars (\$938.00) for ambulatory residents and nine hundred seventy-nine dollars (\$979.00) for semiambulatory residents.

(b) Effective July 1, 1994, the maximum monthly rate for residents in domiciliary care facilities shall be nine hundred seventy-five dollars (\$975.00) per month for ambulatory residents and one thousand seventeen dollars (\$1,017) per month for semiambulatory residents."

Requested by: Representatives Easterling, Nye, Esposito, Dickson, Senators Richardson, Walker

#### DHR STUDY OF DIVISION OF YOUTH SERVICES' PROGRAMS AND SERVICES EXTENDED

**Sec. 25.26.** Subsection (d) of Section 36 of Chapter 24 of the Session Laws of the 1994 Extra Session reads as rewritten:

"(d) The Department shall complete this study by ~~November 1, 1994,~~ March 1, 1995, and shall report the results of this study to the 1995 General Assembly by ~~March 1, 1995,~~ April 1, 1995."

Requested by: Representatives Easterling, Nye, Nesbitt, Diamont, Dickson, Esposito, Senators Richardson, Walker

#### DIVISION OF YOUTH SERVICES NURSE SALARY PLAN

**Sec. 25.27.** The Department of Human Resources shall implement the salary adjustment plan developed by the Division of Youth Services for nurses within the Division's training schools and shall fund the plan with salary reserve funds within the Department or from salary adjustment funds within the Office of State Budget and Management.

Requested by: Representatives Easterling, Nye, Esposito, Dickson, Senators Richardson, Walker

**REIMBURSEMENT AND COMPENSATION OF MEMBERS OF THE NORTH CAROLINA VOCATIONAL REHABILITATION ADVISORY COUNCIL**

**Sec. 25.29.** Notwithstanding G.S. 138-5(a)(1), members of the North Carolina Vocational Rehabilitation Advisory Council may be reimbursed for reasonable and necessary expenses of attending Council meetings or performing Council duties, as authorized in the federal Rehabilitation Act, as amended. In addition, Council members who are unemployed or who must forfeit wages from other employment to attend may receive compensation not to exceed fifty dollars (\$50.00) a day for Council meetings or performing Council duties, as authorized in the federal Rehabilitation Act, as amended.

Requested by: Representatives Easterling, Nye, H. Hunter, Esposito, Dickson

**CERTAIN SMART START FUNDS DO NOT REVERT**

**Sec. 25.31.** (a) Any new funds that may be appropriated to the Division of Child Development, Department of Human Resources, in fiscal year 1994-95 and to be allocated to new local Smart Start projects to be established during the 1994-95 fiscal year shall not revert until June 30, 1996, but shall remain with the Division for use as provided under Part 10B of Article 3 of Chapter 143B of the General Statutes.

(b) It is the intent of the General Assembly that this section's postponement of reversions of Smart Start funds shall be for one year only and that it shall not be extended.

Requested by: Representatives Nye, Easterling, Dickson, Esposito, Senators Richardson, Walker

**SUPPORT OUR SCHOOLS PROGRAM/FAMILY RESOURCE CENTER GRANT PROGRAM ADMINISTRATIVE COSTS INCREASE**

**Sec. 25.32.** (a) Of the funds appropriated to the Department of Human Resources for the Support Our Schools (S.O.S.) Program for the 1994-95 fiscal year, the Department may use up to one hundred fifty thousand dollars (\$150,000) for the administration of each program, in addition to the two hundred thousand dollars (\$200,000) allocated for the administration of the program by Chapter 24 of the Session Laws, Extra Session 1994.

(b) Of the funds appropriated to the Department of Human Resources for the Family Resource Center Grant Program for the 1994-95 fiscal year, the Department may use up to one hundred thousand dollars (\$100,000) for the administration of each program, in addition to the two hundred thousand dollars (\$200,000) allocated for the administration of the program by Chapter 24 of the Session Laws, Extra Session 1994.

Requested by: Representatives Easterling, Nye, Nesbitt, Diamont, Dickson, Esposito, Senators Richardson, Walker

**EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES APPLICATION CLARIFICATION**

**Sec. 25.33.** The Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., shall ensure that the selection process for the additional local demonstration projects for the Early Childhood Education and Development Initiatives funded in this act shall include the following:

- (1) Acceptance of applications from counties that have not yet applied for funding;
- (2) Acceptance of additional information from counties that have already made application for funding but have not received funding; and
- (3) Consideration of the needs and resources assessment that has been conducted in each county.

Requested by: Representatives Easterling, Nye, Nesbitt, Diamont, H. Hunter, Rogers, Dickson, Esposito, Senators Richardson, Walker  
**SUBSIDIZED DAY CARE FOR MORE ELIGIBLE CHILDREN**

**Sec. 25.34.** (a) Of the funds appropriated in this act to the Department of Human Resources, Division of Child Development, the sum of four million dollars (\$4,000,000) for the 1994-95 fiscal year shall be used to pay for subsidized child day care for children currently eligible for nonentitlement child day care but not currently receiving this care. These funds may be used as follows:

- (1) To pay for care that is currently available in the children's county up to the provider's approved subsidized payment rate; and
- (2) To raise the subsidized payment rate in counties where the current market rate is too low to provide enough care for children. Priority shall be given to counties with the lowest current market rate. For Category "B" providers, the subsidized payment rate shall not exceed the statewide market rate.

These funds shall be used in such a way as to maximize the number of eligible children receiving subsidized child day care.

(b) The Division of Child Development shall report to the 1995 General Assembly and to the Fiscal Research Division of the Legislative Services Office by March 15, 1995, on the number of children whose child day care is funded pursuant to this section, and on the number of children eligible for child day care who still are waiting to be served. This report shall include county-level data on the number of these children who could be served if funds were available, the number of these children for whom service is not available in their community, and data on where these children live, including relevant demographic data. This report shall also include a determination of whether other eligible children not on any waiting list remain to be served.

Requested by: Representatives Easterling, Nye, Dickson, Esposito, Senators Richardson, Walker

#### **DAY CARE RATE CLARIFICATION**

**Sec. 25.35.** (a) The 1993 Legislative Research Commission Study Committee on Child Care shall study the whole issue of day care rates to determine whether the rate structure needs to be amended or overhauled.



This study shall include an examination of whether county departments of social services are using a provider's failure to comply with requirements in addition to those specified in subsection (b) of Section 248 of Chapter 321 of the 1993 Session Laws as a condition for reducing the provider's subsidized child day care rates.

The Committee shall include the results of this study, including any legislative recommendations, in its report to the Legislative Research Commission for transmittal to the 1995 General Assembly.

(b) Subsection (b) of Section 248 of Chapter 321 of the 1993 Session Laws reads as rewritten:

'(b) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes may participate in the program that provides for the purchase of care in day care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, day care facilities shall be required to meet any additional applicable requirements of federal law or regulations.

Day care homes as defined in G.S. 110-86(4) from which the State purchases day care services shall meet the standards established by the Child Day Care Commission pursuant to G.S. 110-101 and G.S. 110-105.1 and any additional requirements of State law or federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child day care rate.'

Requested by: Representatives Easterling, Nye, Nesbitt, Diamont, Hayes, Dickson, Esposito, Senators Richardson, Walker

#### FAMILY TO FAMILY FUNDS PROJECTS AUTHORIZED

**Sec. 25.36.** The Department of Human Resources may establish Family to Family projects that will replicate Project L.I.F.T. (Local Individuals Finding Themselves), of Concord, North Carolina. Project L.I.F.T. works through families helping other families deal with crime, substance abuse, and other issues facing parents and their children. It targets families in Concord's public housing communities to provide positive living skills, crime prevention activities, nutrition advice, higher education, substance abuse counselling, and healthy lifestyle activities. Project L.I.F.T., and any projects that replicate it, are vital measures in preventing crime and violence.

Requested by: Representatives Easterling, Nye, Esposito, Dickson, Diamont, Senators Richardson, Walker

#### FOSTER CARE REPORTING

**Sec. 25.37.** Counties receiving funds for foster care in this act shall report quarterly, beginning with the second quarter of the 1994-95 fiscal year, to the Division of Social Services, Department of Human Resources the following:

- (1) A narrative description of the use of State funds;
- (2) Workload statistics and indicators for foster care as established by the Division of Social Services; and
- (3) Development of a coordinated approach to providing children's services, with emphasis on meeting the total needs of the children and families being served.

The Division shall evaluate and report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office by April 30, 1995, on the State's efforts in implementing this section. The evaluation and report shall include evaluation of the current foster care delivery system and the impact of implementing this section.

Requested by: Representatives Easterling, Nye, Dickson, Esposito, Senators Richardson, Walker

#### ADOPTION SUBSIDY

**Sec. 25.40.** Section 235 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 235. (a) The adoption subsidy paid monthly by the Division of Social Services, Department of Human Resources, to eligible families who adopt hard-to-place children shall be established at two hundred sixty-five dollars (\$265.00) per child per month.

(b) Effective July 1, 1994, the adoption subsidy paid monthly by the Division of Social Services, Department of Human Resources, to eligible families who adopt hard-to-place children shall be established based on a graduated rate as follows:

- (1) \$315.00 per child per month for children aged birth through 5;
- (2) \$365.00 per child per month for children aged 6 through 12; and
- (3) \$415.00 per child per month for children aged 13 through 18."

Requested by: Representatives Easterling, Nye, Diamont, Esposito, Dickson, Senators Richardson, Walker

#### FOSTER CARE

**Sec. 25.41.** Section 231 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 231. (a) Funds appropriated to the Department of Human Resources ~~in this act~~ for foster care assistance rates shall be used to set the rates at two hundred sixty-five dollars (\$265.00) per child per month. Of this sum, fifteen dollars (\$15.00) is a special needs allowance for the child.

(b) Effective July 1, 1994, funds appropriated to the Department of Human Resources for foster care assistance rates shall be used to pay assistance on a graduated rate as follows:

- (1) \$315.00 per child per month for children aged birth through 5;
- (2) \$365.00 per child per month for children aged 6 through 12; and
- (3) \$415.00 per child per month for children aged 13 through 18.

Of these amounts, fifteen dollars (\$15.00) is a special needs allowance for the child."

Requested by: Representatives Nye, Easterling, Nesbitt, Diamont, H. Hunter, Dickson, Esposito, Senators Richardson, Walker  
**HIV FOSTER CARE BOARD PAYMENT FUNDS**

**Sec. 25.42.** Of the funds appropriated in this act to the Department of Human Resources, Division of Social Services, the sum of four hundred ninety-nine thousand five hundred dollars (\$499,500) shall be used for foster care board payments for children with HIV, to be allocated as follows:

- (1) \$800.00 per month per child with indeterminate HIV status;
- (2) \$1,000 per month per child confirmed HIV-infected, asymptomatic;
- (3) \$1,200 per month per child confirmed HIV-infected, symptomatic; and
- (4) \$1,600 per month per child terminally ill with complex care needs.

Requested by: Representatives Easterling, Nye, Nesbitt, Diamont, H. Hunter, Esposito, Dickson, Senators,  
**DEPARTMENT STUDY OF CHILD-CARING AGENCIES  
REIMBURSEMENT DISCREPANCIES**

**Sec. 25.43.** The Department of Human Resources shall study the reimbursement method for child-caring agencies to determine whether inequitable discrepancies exist among agencies' reimbursement rates that should be rectified. This study shall include a detailed analysis of federal formulas and of State formulas to determine whether inequities exist at the federal formula level that can be rectified by State action and a detailed examination of whether agencies that have historically served minority children are suffering from inequitable reimbursement.

The Department shall report the results of this study, together with any recommendations for needed State action, to the General Assembly by March 15, 1995.

Requested by: Representatives Easterling, Nye, Diamont, Esposito, Dickson, Senators Hyde, Richardson, Walker  
**MATERNITY HOME AND ADOPTION FUNDS**

**Sec. 25.44.** (a) From funds appropriated in this act to the Department of Human Resources, Division of Social Services, the sum of six hundred sixty-five thousand dollars (\$665,000) for the 1994-95 fiscal year is allocated to the State Maternity Home Fund to provide maternity home services to single pregnant young women 10 years of age and older for the purposes of protecting and enhancing maternal and child health, reducing infant mortality and morbidity, reducing the number of unintended second pregnancies, preventing mothers from permanently dropping out of school, preventing welfare dependency, and providing adoption and parenting support.

(b) From funds appropriated in this act to the Department of Human Resources, Division of Social Services, the sum of seven hundred fifty thousand dollars (\$750,000) for the 1994-95 fiscal year shall be used to contract with the Children's Home Society of North Carolina, Inc., to recruit and train families to adopt children with special needs and to provide

postadoption and support services for these families and children. Children with special needs include medically fragile infants and children, sibling groups, abused, neglected, and abandoned infants and children, HIV-positive infants and children, addicted infants, children with behavior problems and emotional disorders, minority infants and children, and older children.

(c) The Department of Human Resources shall report to the 1995 General Assembly and to the Fiscal Research Division of the Legislative Services Office by March 15, 1995, on the use of funds allocated pursuant to subsections (a) and (b) of this section. This report shall include a detailed analysis of the services provided, of the people served, and of the program's relative success in achieving its goals as prescribed by subsections (a) and (b) of this section.

Requested by: Representatives Easterling, Nye, Colton, Dickson, Esposito, Senators Richardson, Walker

#### CHILD-CARING AGENCIES FUNDS

**Sec. 25.45.** Of the funds appropriated to the Department of Human Resources, Division of Social Services, the sum of seven hundred fifty-five thousand fifty-nine dollars (\$755,059) shall be used to provide partial reimbursement to the following ten private, nonprofit child-caring agencies for the placement of certain children by county departments of social services:

- (1) Bertie-Martin-Beaufort County Shelter Home, of Jamesville;
- (2) Caldwell Residential Services, of Lenoir;
- (3) Caring for Children, Inc., of Asheville;
- (4) The Children's Home Society of North Carolina, Inc., of Greensboro;
- (5) Children's Homes of Cleveland County, of Shelby;
- (6) Family Resources of Rutherford County, Inc., of Spindale;
- (7) Florence Crittenton Services, of Charlotte;
- (8) Loray Girls Home, of Gastonia;
- (9) Yahweh Center, Inc., of Wilmington; and
- (10) Youth Homes, Inc., of Charlotte.

The children for whom these funds are appropriated are children not eligible for federal matching funds under the Title IV-E foster care maintenance payments. The ten agencies named in this section shall be added to the list of eligible agencies according to the provisions of NCAE 10, Subchapter 41M.

Requested by: Representatives Nye, Easterling, Diamont, Dickson, Esposito, Senators Richardson, Walker, Harris

#### MEDICAID COVERAGE FOR ADOPTIVE CHILDREN WITH SPECIAL NEEDS

**Sec. 25.46.** Effective October 1, 1994, the Department of Human Resources shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Requested by: Representatives Nye, Easterling, Alexander, Dickson, Esposito, Senators Marshall, Richardson, Walker  
MEDICAID ESTATE RECOVERY PLAN, AS REQUIRED BY FEDERAL LAW

**Sec. 25.47.** (a) Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"§ 108A-70.5. Medicaid Estate Recovery Plan.

(a) There is established in the Department of Human Resources, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993, to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid the recipient. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p).

(b) As used in this section:

(1) 'Medical assistance' means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient is receiving these medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving these medical care services, including related hospital care and prescription drugs, for nursing facility services or home- and community-based services.

(2) 'Estate' means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. The Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Human Resources shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the Plan, including rules to waive whole or partial recovery when this recovery would be inequitable because it would work an undue hardship or because it would not be administratively cost-effective and rules to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit



association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program."

(b) Of the funds appropriated in this act from the General Fund to the Department of Human Resources, Division of Medical Assistance, the sum of one hundred four thousand seven hundred fifty dollars (\$104,750) for the 1994-95 fiscal year, of which fifty thousand dollars (\$50,000) is nonrecurring, shall be used to implement this section.

(c) Subsection (a) of this section becomes effective October 1, 1994, and applies to individuals who apply for medical assistance on or after that date. The remainder of this section becomes effective July 1, 1994.

Requested by: Representatives Nye, Easterling, Dickson, Esposito, Senators Richardson, Walker

HEALTH MAINTENANCE ORGANIZATION INSURANCE  
REQUIREMENT

**Sec. 25.48** G.S. 58-67-10(b)(3a) reads as rewritten:

"(3a) This Article does not apply to any prepaid health service or capitation arrangement implemented or administered by the Department of Human Resources or its representatives, pursuant to 42 U.S.C. § 1396n or Chapter 108A of the General Statutes, or to any provider of health care services participating in such a prepaid health ~~services~~ service or capitation arrangement. ~~the Department of Human Resources, any division in the Department, or any direct provider of health care services in connection with any direct, capitated, or otherwise prepaid arrangement applicable to health care services authorized pursuant to 42 U.S.C. § 1396n or Chapter 108A of the General Statutes.~~ Nothing in this subdivision exempts health maintenance organizations or any other person who undertakes to provide or arrange for the delivery of basic health care services to all enrollees on a prepaid basis, from complying with all applicable provisions in this ~~Article.~~ Article; provided, however, that to the extent this Article applies to any such person acting as a subcontractor to a Health Maintenance Organization licensed in this State, that person shall be considered a single service Health Maintenance Organization for the purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-110."

Requested by: Representatives Diamont, Nesbitt, Crawford, Dickson, Esposito, Senators Richardson, Walker

ALZHEIMER'S FUNDS

**Sec. 25.50.** Of the funds appropriated in this act to the Department of Human Resources, Division of Aging, the sum of one hundred thousand dollars (\$100,000) for the 1994-95 fiscal year shall be used to support services delivered to Alzheimer's patients and their families. These funds shall be allocated to each of the four Alzheimer's Association Chapters in

North Carolina, in grants of twenty-five thousand dollars (\$25,000) each. Each Chapter shall submit to the Division for approval a plan for the use of the funds it is to receive. Following the Division's approval, the Division shall disburse these funds according to a timetable outlined in each Chapter's plan.

Requested by: Representatives Nye, Easterling, Dickson, Esposito, Senators Richardson, Walker

#### CONTINUING BUDGET ACT TECHNICAL CHANGES

**Sec. 25.51.** (a) Section 227 of Chapter 321 of the 1993 Session Laws, as rewritten by Chapter 591 of the 1993 Session Laws, reads as rewritten:

"Sec. 227. Effective ~~October 1, 1994~~, January 1, 1995, the Department of Human Resources, Division of Medical Assistance, shall implement a budget-neutral Diagnosis-Related Group reimbursement methodology for inpatient hospital services."

(b) The catchline of Section 18 of Chapter 591 of the 1993 Session Laws reads as rewritten:

*"NORTH CAROLINA HEALTH PLANNING COMMISSION FUNDS FUNDS/REPORTING DEADLINE EXTENSION".*

(c) Section 18 of Chapter 591 of the 1993 Session Laws is amended by inserting a new subsection to read:

"(a1) Subsection (b) of Section 2.1 of Chapter 529 of the 1993 Session Laws is rewritten as follows:

'(b) The Governor shall present to the General Assembly no later than February 1, 1995, a plan for consolidating all of the State health functions into one State Department of Health. The plan shall be based upon and shall address the principles and elements outlined in subsections (c) and (d) of this section.'"

#### PART 26. DEPARTMENT OF AGRICULTURE

Requested by: Representatives Bowman, Yongue, Nesbitt, Diamont, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

**NORTH CAROLINA WAREHOUSE ACT FUND**

**Sec. 26.** (a) G.S. 106-435 reads as rewritten:

"§ 106-435. *Fund for support of system; collection and investment.*

In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: that on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June 30, 1922, twenty-five cents (25¢) shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the

machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum (10%) of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than 10 years: Provided further, that the interest received from all investments shall be available for appropriation for capital projects and nonrecurring expenditures as provided in the bill making the appropriation, and for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of sections 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. The fund created by this section may be used for loans to owners of cotton gins to make improvements to gins to comply with federal and State air quality regulations, rules, and laws. The loans shall be secured and made under terms and conditions approved by the Board of Agriculture. Income earnings, including earnings from interest, may also be used by the Department of Agriculture for cotton promotion activities."

(b) There is appropriated from the North Carolina Warehouse Act Fund to the Department of Agriculture, the sum of one hundred thousand dollars (\$100,000) in accumulated interest for the 1994-95 fiscal year to be used for maintenance and operation of the Ballentine Building on Blue Ridge Boulevard in Raleigh to house the pesticide program.

(c) There is appropriated from the North Carolina Warehouse Act Fund to the Department of Agriculture, the sum of one hundred thousand dollars (\$100,000) in accumulated interest for the 1994-95 fiscal year to be used for repairs, maintenance, operation, and cotton promotion projects and activities of Oakview Plantation in Wake County.

Requested by: Representatives Black, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### AGRICULTURE IN THE CLASSROOM

**Sec. 26.1.** Of the funds appropriated to the Department of Agriculture the sum of one hundred twenty-five thousand dollars (\$125,000) for the 1994-95 fiscal year shall be used as a Grant-in-Aid for The North Carolina Farm Bureau Foundation for Agriculture in the Classroom, Inc., an educational program that works to develop a deeper appreciation for

North Carolina's agricultural industry while promoting sound educational principles that lead to optimum classroom effectiveness.

## PART 27. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Senator Martin of Pitt, Representatives Bowman, H. Hunter  
IMMUNIZATION PROGRAM FUNDING

**Sec. 27.** Section 109 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"(a) Of the funds appropriated in Chapter 321 of the 1993 Session Laws from the General Fund to the Department of Environment, Health, and Natural Resources for the ~~1993-94~~ 1994-95 fiscal year for childhood immunization programs for positions, operating support, equipment, and pharmaceuticals, the sum of up to one million dollars (\$1,000,000) may be used for projects and activities that are also designed to increase childhood immunization rates in North Carolina. These projects and activities shall include the following:

- (1) Outreach efforts at the State and local levels to improve service delivery of vaccines. Outreach efforts may include educational seminars, media advertising, support services to parents to enable children to be transported to clinics, longer operating hours for clinics, and mobile vaccine units; and

- (2) Continued development of an automated immunization registry.

(b) Funds authorized to be used for immunization efforts under subsection (a) of this section shall not be used to fund additional State positions in the Department of Environment, Health, and Natural Resources.

(c) The Department of Environment, Health, and Natural Resources shall not obligate or expend funds authorized for the purposes stated in subsection (a) of this section until the Department has prepared and submitted for review to the Joint Legislative Commission on Governmental Operations the eight-year plan for implementation of the statewide immunization program required under Section 287 of Chapter 321 of the 1993 Session Laws. In addition to the requirements of Section 287 of Chapter 321 of the 1993 Session Laws, the eight-year plan shall address planned expenditures and immunization projects and activities identified under subsection (a) of this section."

Requested by: Senator Martin of Pitt, Representative James  
WILDLIFE RESOURCES COMMISSION/FUNDS FOR SALARY INCREASES

**Sec. 27.1.** (a) G.S. 105-164.44B, as amended by Section 290(a) of Chapter 321 of the 1993 Session Laws, reads as rewritten:

"§ 105-164.44B. *Transfer to Wildlife Resources Fund of taxes on hunting and fishing supplies and equipment.*

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth

~~of three million seven hundred thirty-one thousand one hundred sixteen dollars (\$3,731,116) four million four hundred eighty-nine thousand four hundred eighty-seven dollars (\$4,489,487) plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year plus the cost of any legislative salary increase for employees of the Wildlife Resources Commission."~~

(b) Subsection (a) of this section expires June 30, 1995.

(c) Subsection (c) of Section 290 of Chapter 321 of the 1993 Session Laws is repealed.

Requested by: Senator Daniel, Representative Bowman

#### WILDLIFE RESOURCES COMMISSION LONG-RANGE BUDGET PLAN

Sec. 27.2. Section 172 of Chapter 900 of the 1991 Session Laws reads as rewritten:

"Sec. 172. (a) The Wildlife Resources Commission shall prepare a long-range budget plan for review and consideration by the General Assembly. The budget plan shall include:

- (1) An analysis of revenues and expenditures from the ~~1986-87~~ 1987-88 fiscal year through the ~~1991-92~~ 1993-94 fiscal year identifying: (i) the major revenue sources and expenditure items within each program or division; (ii) the major increases or decreases in revenues and expenditures over the period and the rationale for these changes; and (iii) those wildlife programs or divisions that have experienced significant growth in expenditures since the ~~1986-87~~ 1987-88 fiscal year;
- (2) An inventory and analysis of all revenue sources, including the North Carolina Wildlife Endowment Fund, that identifies: (i) funds that may be used only for specific purposes; and (ii) funds that may be used for general program purposes;
- (3) Revenue and expenditure projections for the ~~1992-93~~ 1994-95 through ~~1996-97~~ 1998-99 fiscal years, by program and major budget objects; and
- (4) Long-term options for funding the operations of the Wildlife Resources Commission, including: (i) revenue increases, including increased license fees, subscription fees, and registration fees; use of interest from the North Carolina Wildlife Endowment Fund; and increases in the General Fund from sales tax and any other General Fund monies; and (ii) operating and capital expenditure reductions. The Commission shall present a detailed implementation plan and specific recommendations for each option that would ensure future spending deficits would not occur.

(b) The Wildlife Resources Commission shall prepare a report incorporating its long-range budget plan, including all components of this plan as set forth in subsection (a) of this section, and shall transmit this report to the General Assembly and the Fiscal Research Division by January 12, ~~1993~~ 1995.



(c) The Office of State Auditor shall conduct a financial audit and a performance audit of the Wildlife Resources Commission and shall report its findings and recommendations to the 1995 General Assembly upon its convening."

Requested by: Senator Martin of Pitt, Representatives Bowman, H. Hunter, Wright, Bowen, Redwine

#### BEAVER CONTROL FUNDS

**Sec. 27.3.** (a) Subsection (b) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, reads as rewritten:

"(b) The Beaver Damage Control Advisory Board shall develop a pilot program to control beaver damage on private and public lands. Bladen, Brunswick, Columbus, Duplin, Edgecombe, Franklin, Halifax, Johnston, Nash, Onslow, Pender, Pitt, Robeson, and Sampson ~~Sampson~~, Vance, Warren, Wayne, and Wilson Counties shall participate in the pilot program. The Beaver Damage Control Advisory Board shall act in an advisory capacity to the Wildlife Resources Commission in the implementation of the program. In developing the program, the Board shall:

- (1) Orient the program primarily toward public health and safety and toward landowner assistance, providing some relief to landowners through beaver control and management rather than eradication;
- (2) Develop a priority system for responding to complaints about beaver damage;
- (3) Develop a system for documenting all activities associated with beaver damage control, so as to facilitate evaluation of the program;
- (4) Provide educational activities as a part of the program, such as printed materials, on-site instructions, and local workshops;
- (5) Provide for the hiring of personnel necessary to implement beaver damage control activities, administer the pilot program, and set salaries of personnel;
- (6) Evaluate the costs and benefits of the program that might be applicable elsewhere in North Carolina.

Upon No later than September 30, 1994 and again upon the conclusion of the pilot program on ~~December 1, 1994~~, June 30, 1995, the Board shall issue a report to the Wildlife Resources Commission on the results of the program, program to date, including recommendations on the feasibility of continuing the program in participating counties and the desirability of expanding the program into other counties. The Wildlife Resources Commission shall prepare a plan to implement a statewide program to control beaver damage on private and public lands. No later than January 1, 1995, the Wildlife Resources Commission shall present its plan in a report to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources."

(b) Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~December 1, 1994~~, June 30, 1995."

(c) Of the funds appropriated to the Wildlife Resources Commission in this act for the 1994-95 fiscal year, the sum of one hundred fifty thousand dollars (\$150,000) shall be used to provide the State share necessary to continue the beaver damage control pilot program established by Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws and this section, to Bladen, Brunswick, Columbus, Duplin, Edgecombe, Franklin, Halifax, Johnston, Nash, Onslow, Pender, Pitt, Robeson, Sampson, Vance, Warren, Wayne, and Wilson Counties, provided the sum of twenty-five thousand dollars (\$25,000) in federal funds is available to provide the federal share. These funds shall be matched by four thousand dollars (\$4,000) of local funds from each of the 18 participating counties.

Requested by: Representatives Bowman, Culp, H. Hunter, Wright,  
Senators Martin of Pitt, Cochrane

#### MINING EDUCATION/TRAINING FUNDS

Sec. 27.4. The Department of Environment, Health, and Natural Resources, Division of Land Resources, may use twenty thousand dollars (\$20,000) of available funds for the 1994-95 fiscal year to develop and publish a Mining Compliance Manual for mining applicants, permittees, and inspectors.

Requested by: Representatives Diamont, Bowman, Gottovi, Yongue, Culp,  
Jenkins, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### WATTS FARM CLEANUP STUDY FUNDS

Sec. 27.5. The Department of Environment, Health, and Natural Resources shall use available funds to study the cleanup of the mixed low-level radioactive and hazardous waste that is located in Wilkes County at the abandoned waste disposal site known as the Watts Retreat Farm. This study shall address the manner and costs of retrieving, transporting, and disposing of these wastes at this site, where the wastes will be disposed, the potential liability of current and previous landowners of the site, the State, and any other potentially responsible parties, the need for the State to monitor the area before, during, and after the cleanup, the costs of such monitoring efforts, and any other issues the Department considers needed to be included in the study. The Department shall report to the Joint Legislative Commission on Governmental Operations, to the Chairs of the House Appropriations Subcommittee on Natural and Economic Resources, to the Chair of the Senate Committee on Natural and Economic Resources, and to the Fiscal Research Division by January 15, 1995.

Requested by: Representatives Gottovi, Bowman, H. Hunter, Wright,  
Senators Martin of Pitt, Cochrane

#### INFANT MORTALITY FUNDS FOR MINORITY POPULATIONS

Sec. 27.6. (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, the sum of seven hundred fifty thousand dollars (\$750,000)

for the 1994-95 fiscal year shall be used to fund 15 grant projects in various communities to demonstrate means to lower infant mortality rates and percent of low birthweight babies among minority populations to bring the rates and percentage nearer those of the white population.

(b) The Division of Maternal and Child Health shall award the grants to the 15 projects based upon recommendations of a grant review team consisting of representatives of the Division of Maternal and Child Health, the Department's Office of Minority Health, and the North Carolina Governor's Commission on Reduction of Infant Mortality.

Requested by: Representatives Gottovi, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### INFANT MORTALITY REPORT EXTENSION

**Sec. 27.7.** Subsection (a) of Section 284 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 284. (a) Of the funds appropriated in this act from the General Fund to the Department of Environment, Health, and Natural Resources for the Governor's Commission on the Reduction of Infant Mortality, the sum of fifty thousand dollars (\$50,000) for the 1993-94 fiscal year shall be used to contract with outside evaluators to determine the extent to which the public and private health, social services and mental health, developmental disabilities, and substance abuse services systems in each county meet the health needs of pregnant women and infants up to age one, and of children ages one to five. The study shall include, but not be limited to: an examination of the percentage of pregnant women in each county that receive early and continuous prenatal care; the extent to which eligible pregnant women, infants, and children are receiving nutritional supplements, case management and other necessary health, social, mental health, and other support services; and the extent to which children are receiving age-appropriate immunizations. The study shall determine what barriers, if any, exist in each county which prevent pregnant women, infants, and children under the age of five from receiving timely and necessary health services. The Governor's Commission on the Reduction of Infant Mortality shall continue its study and shall report its findings to the General Assembly on or before May 15, 1994, September 15, 1994."

Requested by: Representatives Easterling, Diamont, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### EXTEND CHILD FATALITY TASK FORCE/EXPAND MEMBERSHIP

**Sec. 27.8.** (a) G.S. 143-577(b) reads as rewritten:

"(b) The Task Force shall provide updated reports to the Governor and General Assembly within the first week of the convening of the 1993 General Assembly and Assembly, within the first week of the convening of the 1994 Regular Session of the 1993 General Assembly, Assembly, within the first week of the convening of the 1995 General Assembly, and within the first week of the convening of the 1996 Regular Session of the 1995 General Assembly. The Task Force shall provide a final report to the Governor and General Assembly within the first week of the convening of the 1995 1997 General Assembly. The final report shall include final

conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State."

(b) Section 285(e) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(e) Subsections (b), (c), and (d) of this section become effective ~~February 1, 1995~~ February 1, 1997. The ~~rest~~ remainder of this section is effective upon ratification of this act."

(c) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources the sum of eighty-five thousand dollars (\$85,000) for the 1994-95 fiscal year shall be used to continue the operations of the North Carolina Child Fatality Task Force.

(d) G.S. 143-573(b) reads as rewritten:

(b) The Task Force shall be composed of ~~30~~ 36 members, 12 of whom shall be ex officio members, four of whom shall be appointed by the Governor, ~~seven~~ ten of whom shall be appointed by the Speaker of the House of Representatives, and ~~seven~~ ten of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

- (1) The Chief Medical Examiner;
- (2) The Attorney General;
- (3) The Director of the Division of Social Services;
- (4) The Director of the State Bureau of Investigation;
- (5) The Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
- (6) The Director of the Governor's Youth Advocacy and Involvement Office;
- (7) The Superintendent of Public Instruction;
- (8) The Chairman of the State Board of Education;
- (9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (10) The Secretary of the Department of Human Resources;
- (11) The Secretary of the Department of Environment, Health, and Natural Resources;
- (11.1) The Director of the Administrative Office of the Courts;
- (12) A director of a county department of social services appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
- (13) A representative from a Sudden Infant Death Syndrome counseling and education program appointed by the Governor upon recommendation of the Director of the Division of

- Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
- (14) A representative from the North Carolina Child Advocacy Institute appointed by the Governor upon recommendation of the President of the Institute;
  - (14.1) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;
  - (15) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;
  - (16) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;
  - (17) A representative from the North Carolina League of Municipalities appointed by the Speaker of the House of Representatives upon recommendation of the League;
  - (18) Two public members appointed by the Speaker of the House of Representatives;
  - (19) A county or municipal law enforcement officer appointed by the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;
  - (20) A district attorney appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;
  - (21) A representative from the North Carolina Association of County Commissioners appointed by the President Pro Tempore of the Senate upon recommendation of the Association;
  - (22) Two public members appointed by the President Pro Tempore of the Senate; and
  - (23) ~~Two~~ Five members of the Senate appointed by the President Pro Tempore of the Senate and ~~two~~ five members of the House of Representatives appointed by the Speaker of the House of Representatives."

Requested by: Representatives Diamont, Michaux, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane  
 WOMEN'S HEALTH SERVICE FUND

Sec. 27.9. (a) Fund established. The Women's Health Service Fund is created within the Department of Environment, Health, and Natural Resources. The Department may make reimbursements from the Fund to approved medical providers for services rendered to eligible women who voluntarily request the insertion, implantation, or injection of a long-term, reversible contraceptive device or drug.

(b) Definitions. As used in this section, unless the context clearly requires otherwise:



- (1) "Device or drug" means a long-term, reversible contraceptive device or drug the implantation, insertion, or injection of which is a service covered under this section.
  - (2) "Long-term, reversible contraceptive device or drug" means a device or drug approved for contraceptive purposes by the United States Food and Drug Administration, that, when implanted under the skin, inserted into the uterus, or injected into the bloodstream of a woman of child-bearing age will inhibit or prevent conception for a definite period of time, the contraceptive effects of which are reversible upon removal or discontinuance of the device or drug.
  - (3) "Medical provider" means a licensed physician, physician's assistant, nurse practitioner, or other health care provider approved by the Department to provide services under this section.
  - (4) "Woman" or "women" means one or more females of child-bearing age.
- (c) Rules. The Department shall adopt rules for the administration of and allocations from the Fund. The rules shall include the following:
- (1) Eligibility requirements enabling women, whether married or unmarried, to obtain upon request the implantation, insertion, or injection of a long-term, reversible contraceptive device or drug. Except in cases of medical necessity, women may receive contraceptive devices under this section on a one-time basis only.
  - (2) Services under this section shall be conditioned upon agreement by the recipient to attend, prior to insertion, implantation, or injection of the device or drug, education programs approved by the Department. The education programs shall include:
    - a. Comprehensive preinsertion or preprescription counseling on implantation, insertion, injection, and removal procedures,
    - b. Potential side effects and costs of the device or drug,
    - c. Other options for preventing conception, including newly approved long-term, reversible contraceptive devices or drugs that become available, and family planning education and counseling, including parenting skills,
    - d. Information on sexually transmitted diseases and the fact that long-term, reversible contraceptive devices and drugs do not protect against such diseases, and
    - e. Counseling for applicants who do not have a high school diploma regarding the benefits of completing her high school education either by remaining in school or obtaining her GED.
  - (3) A long-term, reversible contraceptive device or drug shall be prescribed only upon request voluntarily initiated by the recipient and only when there are clear benefits to the recipient as determined by the recipient in consultation with an approved medical provider.
  - (4) Procedures for the safe removal or discontinuance of the device or drug, where applicable.
  - (5) Written notice to applicants for services that the Department has no obligation to reimburse providers for the reimplantation or reinsertion of a device that has been prematurely removed from the

individual except in cases where the premature removal was prescribed for medical reasons.

(d) Coercion prohibited. The Department shall adopt procedures and rules to ensure that application information, education, and counseling provided to women about the services available under this section are not coercive in any manner, do not offer financial or other incentives to request or refuse the services, and do not impose penalties for the refusal of services.

(e) Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of seven hundred fifty thousand dollars (\$750,000) shall be allocated to the Women's Health Service Fund created in subsection (a) of this section.

(f) Nothing in this section creates an entitlement to services authorized under this section.

Requested by: Representatives Diamont, H. Hunter, Bowman, Wright, Lemmond, Senators Martin of Pitt, Cochrane

#### **ADOLESCENT PREGNANCY PREVENTION/MEDIA CAMPAIGN AND ABSTINENCE UNTIL MARRIAGE EDUCATION FUNDS**

**Sec. 27.10.** (a) Of the funds appropriated in Section 3 of Chapter 321 of the 1993 Session Laws to the Department of Environment, Health, and Natural Resources for health programs, the sum of up to one hundred thirty thousand dollars (\$130,000) for the 1994-95 fiscal year may be used as follows:

- (1) Seventy-seven percent (77%) of these funds, not to exceed the sum of one hundred thousand dollars (\$100,000), to initiate a statewide media campaign, in conjunction with the North Carolina Coalition on Adolescent Pregnancy, for the purpose of promoting abstinence, reducing pregnancy, and promoting healthy behavior in North Carolina's children ages 9-14. These funds shall be used to purchase the rights to the Maryland Media Campaign, which is an abstinence-based campaign, to purchase print media, radio ads, television ads, and for distribution of campaign material.
- (2) Twenty-three percent (23%) of these funds, not to exceed the sum of thirty thousand dollars (\$30,000), to fund a sex education curriculum that promotes abstinence until marriage. Systems that apply for these funds may receive up to two thousand five hundred dollars (\$2,500) each. Nothing shall prohibit a school system from receiving private funds to provide this curriculum.

(b) All applications for grants for funds prescribed in subdivision (2) of subsection (a) of this section shall contain a detailed description of the curriculum to be offered and a full set of materials to be used. Prior to making any grants, the Department shall review all curriculum descriptions and materials and shall use the results of this review in determining whether to award grants. If any of the initial school systems that apply for grants are rejected by the review process, other school systems may apply.

(c) The Department shall report on the status and funding of the statewide media campaign and abstinence until marriage education to the House Appropriations Subcommittee on Natural and Economic Resources

and the Senate Appropriations Committee on Natural and Economic Resources by January 15, 1995.

Requested by: Representatives Bowman, Culp, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### SOIL SURVEY POSITIONS FUNDS

**Sec. 27.11.** Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred three thousand dollars (\$103,000) shall be used to continue, for the 1994-95 fiscal year, support for three soil scientist positions in the Soil Survey Section. These positions work with counties to conduct soil surveys throughout the State and to map soil locations and identities. Funds authorized under this section may be used to establish, support, and provide travel expenses for these positions.

Requested by: Representatives Bowman, Gottovi, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### AGRICULTURE COST SHARE PROGRAM FUNDS

**Sec. 27.12.** Of the funds appropriated to the Department of Environment, Health, and Natural Resources in Section 3 of Chapter 321 of the 1993 Session Laws, for the Agriculture Cost Share Program for Nonpoint Source Pollution Control for the 1994-95 fiscal year, the sum of forty thousand dollars (\$40,000) shall be used to install best management practices to protect water quality, including tide gates, water control structures, and waste management measures in rural environs, in the subbasin of the Cape Fear River and Atlantic drainage east of Cypress Creek and north of Walden Creek, under the Rural Clean Water Demonstration Program and in accordance with the match and program requirements specified in G.S. 143-215.74(b)(6).

Requested by: Representatives Nesbitt, Diamont, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### STATE PARKS FUNDS

**Sec. 27.13.** Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of one million dollars (\$1,000,000) for the 1994-95 fiscal year shall be allocated to the Parks and Recreation Trust Fund established under Senate Bill 733 as enacted by the 1993 Session and expended as provided by G.S. 113-44.15(b) as enacted by Senate Bill 733, 1993 Session.

Requested by: Representatives Bowman, Gottovi, James, Culp, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### STATE PARKS RETIREMENT

**Sec. 27.14.** The Department of Environment, Health, and Natural Resources may use up to two hundred seventy thousand two hundred twenty-four dollars (\$270,224) of available funds for retroactive retirement benefits for eligible employees in the Division of Parks and Recreation, as authorized under the Supplemental Retirement Income Plan for State Law Enforcement Officers.

Requested by: Representatives Diamont, Bowman, H. Hunter, Wright,  
Senators Martin of Pitt, Cochrane

#### REALLOCATION OF FUNDS

**Sec. 27.15.** Notwithstanding the provisions of Section 112 of Chapter 1034 of the 1984 Session Laws and Section 238.2 of Chapter 689 of the 1991 Session Laws, the funds allocated for the Town Fork Flood Control and Water Supply (Stokes County) shall be reallocated as a grant to the Pilot Mountain Foundation, Inc., for capital improvements. The funds appropriated in Chapter 480 of the 1985 Session Laws and Chapter 754 of the 1989 Session Laws for construction of the Town Forks Reservoir Project in Stokes County are extended for the purpose authorized and shall not revert until June 30, 1997.

Requested by: Senators Daniel, Plyler, Martin of Pitt, Cochrane,  
Representatives Redwine, Bowman, H. Hunter, Wright

#### BLUE RIBBON ADVISORY COUNCIL ON OYSTERS

**Sec. 27.16.** (a) There is established the Blue Ribbon Advisory Council on Oysters (hereinafter referred to as "Advisory Council"). The Advisory Council shall consist of 19 members appointed as follows:

- (1) Chair of the Oyster, Clam, and Scallops Committee of the Marine Fisheries Commission (or designee).
- (2) Director of the Marine Fisheries Division of the Department of Environment, Health, and Natural Resources (or designee).
- (3) Cochair of the Joint Legislative Commission on Seafood and Aquaculture (or designees).
- (4) Director of the North Carolina Sea Grant College Program of North Carolina State University (or designee).
- (5) Two representatives from the commercial oyster fishery, one of whom shall represent the northern coastal region and the other shall represent the Pamlico coastal region, appointed by the President Pro Tempore of the Senate.
- (6) Two representatives from the commercial oyster fishery, one of whom shall represent the southern coastal region and the other shall represent the central coastal region, appointed by the Speaker of the House of Representatives.
- (7) One representative from oyster aquaculture appointed by the President Pro Tempore of the Senate.
- (8) One representative with expertise in oyster production and restoration appointed by the President Pro Tempore of the Senate.
- (9) One economist appointed by the Governor.
- (10) One representative with expertise in oyster disease research appointed by the President Pro Tempore of the Senate.
- (11) One representative with expertise in oyster sales and marketing appointed by the Governor.
- (12) One representative with expertise in health considerations and sanitation of oysters appointed by the Speaker of the House of Representatives.
- (13) One representative with expertise in oyster harvesting appointed by the Speaker of the House of Representatives.

- (14) One representative with expertise in oyster processing appointed by the Speaker of the House of Representatives.
- (15) One representative with expertise in water quality appointed by the Governor.
- (16) One social scientist appointed by the Governor.

(b) The Advisory Council shall assist the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture in an advisory capacity and shall study and make recommendations relating to the oyster resource including, but not limited to:

- (1) Restoration of oyster production on public beds.
- (2) Development of aquaculture production of oysters.
- (3) Management of oyster reefs to maximize production.
- (4) Zoning and protective measures concerning oyster reefs and culture operations.
- (5) Marketing and economic development of oysters.
- (6) Development of value-added products and processing.
- (7) Changes in the leasing of oyster bottoms and water columns for culture.
- (8) Expenditure of public funds in relation to private funding of oyster production.
- (9) Development of a management plan for restoration of the oyster resource.

(c) The Chair of the Advisory Council shall be the Chair of the Oyster, Clam, and Scallops Committee of the Marine Fisheries Commission. The Advisory Council shall meet upon the call of the Chair. A majority of the Advisory Council shall constitute a quorum for the transaction of business.

(d) Any person who is a member of the Advisory Council may hold such membership concurrently with and in addition to any other elective or appointive office or offices such person is permitted to hold under G.S. 128-1.1.

(e) Members of the Advisory Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) The Advisory Council shall make written quarterly reports to the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture beginning October 1, 1994. The Advisory Council shall complete its study and make its final written report on or before October 1, 1995. Upon making its final written report, the Advisory Council shall terminate.

(g) The Department of Environment, Health, and Natural Resources shall provide secretarial and other support staff for the Advisory Council.

(h) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1994-95 fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be used for administrative and other expenses incurred by the Blue Ribbon Advisory Council on Oysters.



Requested by: Senators Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Redwine, Wright

#### FISHERY RESOURCE GRANT PROGRAM

**Sec. 27.17.** (a) Creation. There is created within the Department of Environment, Health, and Natural Resources, the Fishery Resource Grant Program. The purpose of the program is to enhance the State's coastal fishery resources through individual grants to test new equipment, research industry trends, perform environmental pilot studies, and study other fishery issues.

(b) Administration. The Marine Fisheries Commission shall administer the Fishery Resource Grant Program, provide technical assistance to grant applicants and recipients, select grant recipients, evaluate pilot programs, and develop guidelines for implementing successful grant programs. Grants shall be evenly distributed among the northern, southern, central, and Pamlico coastal regions.

(c) Application procedure. An applicant may apply for grant funds to the Secretary of the Department of Environment, Health, and Natural Resources. An application must include, but is not limited to, the following:

- (1) A description of the project;
- (2) A detailed statement of the projected costs of the project including the cost to plan and design the project;
- (3) An explanation of how the project will enhance the fishery resource; and
- (4) Any other information needed by the Secretary of the Department to enable the Secretary to make a decision on the application.

(d) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one million dollars (\$1,000,000) for the 1994-95 fiscal year shall be allocated for the Fishery Resource Grant Program established under this section.

Requested by: Representative Redwine

#### OCCONEECHEE MOUNTAIN, BIRD ISLAND, HAMMOCKS BEACH STATE PARK LAND ACQUISITION FUNDS

**Sec. 27.18.** Notwithstanding G.S. 143-16.3, the Divisions of Parks and Recreation and of Coastal Management of the Department of Environment, Health, and Natural Resources may apply to the North Carolina Recreation and Natural Heritage Trust, and other State and federal agencies for funds to acquire Occoneechee Mountain, Bird Island, and additional land at Hammocks Beach State Park.

Requested by: Senators Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Wright

#### REGIONAL STATE PARK STUDY

**Sec. 27.21.** Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of fifteen thousand dollars (\$15,000) for the 1994-95 fiscal year shall be used for the Department of Environment, Health, and Natural Resources to review the needs of the State Parks System as described in the Plan in accordance with G.S. 113-44.14(b) and determine the feasibility and cost of developing the

Mountain Island Lake Area in Gaston, Lincoln, and Mecklenburg Counties as a regional State Park. The Department shall report the results of this study to the 1995 General Assembly.

## PART 28. DEPARTMENT OF COMMERCE

Requested by: Senator Martin of Pitt, Representative Bowman  
**WTTTF FUNDS TO EMPLOYMENT SECURITY COMMISSION**

**Sec. 28.** There is appropriated from the Worker Training Trust Fund to the Department of Commerce, Employment Security Commission, the sum of five hundred twenty-five thousand dollars (\$525,000) for the 1994-95 fiscal year to be allocated as follows:

- (1) \$225,000 to continue the operation of the common follow-up tracking system; and
- (2) \$300,000 to fund salary increases enacted in this act for State employees.

Requested by: Senators Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Wright

## **RURAL ECONOMIC DEVELOPMENT CENTER/COMMUNITY DEVELOPMENT GRANTS**

**Sec. 28.1.** (a) Definition. -- For purposes of this section, the term "community development corporation" means a nonprofit corporation:

- (1) Chartered pursuant to Chapter 55A of the General Statutes;
- (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
- (4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
- (5) Whose primary function is to act as deal-maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the target community.

(a1) Community Development Grants. -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of one million three hundred thousand dollars (\$1,300,000) for the 1994-95 fiscal year shall be used to support community development projects and activities within the State's minority communities. Any community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center shall establish performance-based criteria for determining which community development corporations will receive a grant and the grant amount. Funding will also be allocated to the North Carolina Association of Community Development Corporations, Inc.

The Rural Economic Development Center, Inc., shall allocate these funds as follows:

- (1) \$950,000 for direct grants to the local community development corporations that have previously received State funds for this purpose to support operations and project activities;
- (2) \$100,000 for direct grants to local community development organizations that have not previously received State funds;
- (3) \$200,000 to the North Carolina Association of Community Development Corporations, Inc. to provide training, technical assistance, resource development, project assistance, and support for local community development corporations statewide; and
- (4) \$50,000 to the Rural Economic Development Center, Inc. for the 1994-95 fiscal year to be used to cover expenses in administering this act.

The Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(a2) The North Carolina Community Development Initiative, Inc. -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of two million dollars (\$2,000,000) shall be used to support the loan fund and operations of the North Carolina Community Development Initiative, Inc., and the sum of one hundred seventy-five thousand dollars (\$175,000) for the 1994-95 fiscal year shall be used to support operations and local projects of the SERCDC. The Initiative shall provide operating and project activity grants to mature community development corporations that have demonstrated project and organizational capacity.

The North Carolina Community Development Initiative, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(a3) Microenterprise Loan Program. -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of six hundred fifty thousand dollars (\$650,000) for the 1994-95 fiscal year shall be used to support the loan fund and operations of the Microenterprise Loan Program. The Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(a4) The North Carolina Minority Support Center, Inc. -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of three hundred thousand dollars (\$300,000) for the 1994-95 fiscal year shall be allocated to the North Carolina Minority Support Center, Inc., to provide technical assistance to community-based credit unions. The Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(a5) The Office of State Budget and Management, the Department of Commerce, and the Rural Economic Development Center, Inc., shall ensure that funds allocated to the following organizations are disbursed within 15 working days of the receipt of a request for the funds from the organization:

- (1) The North Carolina Community Development Initiative, Inc.
- (2) The North Carolina Minority Support Center, Inc.

## (3) The Microenterprise Loan Program.

(a6) Capacity Building Grants Program. -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of six hundred thousand dollars (\$600,000) for the 1994-95 fiscal year shall be used to provide grants to depressed counties and municipalities to enable them to acquire short-term capacity for immediate needs for economic development planning and writing of grant applications. The Center shall establish standards for determining each local government's needs and shall make grants on the basis of need.

Definitions. -- For the purposes of this subsection the following definitions apply:

## (1) Economically depressed area. -- Any of the following:

- a. A county that the Secretary of Commerce has designated one of the most economically depressed counties in the State pursuant to G.S. 143B-437A.
- b. That part of a rural county whose poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. For the purpose of this subsection, the poverty rate is the percentage of the population with income below the latest annual federal poverty guidelines issued by the United States Department of Health and Human Services.
- c. That part of a rural county whose rate of unemployment is at least double the State rate of unemployment.
- d. That part of a rural county that experiences an actual or imminent loss of jobs in a number that is equal to or exceeds five percent (5%) of the total number of jobs in the part.

## (2) Rural county. -- A county that the United States Office of Management and Budget has not designated as a metropolitan county.

The Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Department of Commerce on the use of the funds allocated in this subsection and on the outcomes achieved by the program.

(a7) The North Carolina Capital Access Program -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of one million dollars (\$1,000,000) for the 1994-95 fiscal year shall be used to establish the North Carolina Capital Access Program. The program shall leverage this public investment along with private sector resources to stimulate additional financing opportunities for a broad portfolio of small business concerns in North Carolina. The Program shall encourage commercial banks and other depository institutions to provide access to debt capital, thereby promoting a more effective and efficient debt market to provide economic opportunity, create jobs, enhance productivity, and spur innovation.

## (1) Definitions -- The following definitions apply in this subsection:

- a. Financial institution -- Any federally chartered or state chartered commercial bank, savings and loan, savings bank, or credit union.

- b. Participating financial institution -- Any financial institution that has entered into a participation agreement with the Center in accordance with the provisions set forth in this section.
  - c. Enrolled loan -- Loan made by a participating financial institution in accordance with this section.
- (2) The Center may enter into participating agreements with any financial institution determined to have sufficient lending experience and financial and managerial capacity to participate in the Program.
  - (3) Participating financial institutions -- Upon entering into the participation agreement with the Center, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.
  - (4) The Rural Economic Development Center shall administer the Program as established in this section and monitor the Program to ensure compliance with applicable State and federal laws, rules, and relevant court decisions.
  - (5) The Program will have as a goal to leverage public funds with private sector resources on the basis of 20 private dollars to every one public dollar.
  - (6) Of the funds appropriated for the Capital Access Program, the sum of fifty thousand dollars (\$50,000) for the 1994-95 fiscal year shall be used to cover expenses in administering this Program.

The Rural Economic Development Center shall report quarterly to the Joint Legislative Commission on Governmental Operations on the implementation and operation of the Program.

(b) Section 104.1(a) of Chapter 561 of the 1993 Session Laws reads as rewritten:

"(a) Supplemental Funding Pilot Project. -- Of the funds appropriated in this act from the General Fund to the Rural Economic Development Center, Inc., the sum of one million six hundred fifty thousand dollars (\$1,650,000) for the ~~1993-94~~ 1994-95 fiscal year shall be used for a pilot program to provide supplemental funding for matching requirements for economic development in economically depressed areas. The Center shall use the funds to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for necessary economic development projects and activities in economically depressed areas. The grant recipients shall be selected on the basis of need."

(c) Subsections (a1) and (a2) of Section 104.1 of Chapter 561 of the 1993 Session laws apply to this section.

(d) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of one hundred thousand dollars (\$100,000) shall be allocated as follows:

- (1) \$25,000 to the Opportunities Industrialization Center of Wilson, Inc., for its ongoing job training programs;
- (2) \$25,000 to Opportunities Industrialization Center, Inc., in Rocky Mount, for its ongoing job training programs;
- (3) \$25,000 to Pitt-Greenville Opportunities Industrialization Center, Inc., for its ongoing job training programs; and



- (4) \$25,000 to the Opportunities Industrialization Center of Lenoir, Greene, and Jones Counties.

The Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of funds allocated in this subsection.

Requested by: Senators Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Wright

#### BIOTECHNOLOGY FUNDS FOR MINORITY UNIVERSITIES

Sec. 28.2. Section 99 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"Sec. 99. Of the funds appropriated in this act from the General Fund to the North Carolina Biotechnology Center for the ~~1993-94~~ 1994-95 fiscal year, the sum of ~~one million dollars (\$1,000,000)~~ two million dollars (\$2,000,000), one million dollars (\$1,000,000) of which is appropriated for the 1994-95 fiscal year only, shall be used to develop a special biotechnology program initiative for North Carolina's Public Historically Black Universities and Pembroke State University. This program initiative is a means to get more funds to these institutions of higher education in the short run to help them develop their biotechnology programs and a means to develop a mechanism to improve these institutions' capacity over the long term. The Center's special initiative shall, at a minimum, provide for:

- (1) A range of program activities, including grants, designed to enhance the existing strengths and capabilities of Pembroke University, and the public Historically Black Universities;
- (2) A Facilities and Infrastructure Review Committee to advise the Center on major program elements and priority projects that would be most helpful to these institutions; and
- (3) A Program Advisory Panel with representation from these institutions to advise and make recommendations to the Center's President and Board of Directors on funding proposals under this initiative.

The Beginning September 15, 1994, the Center shall report quarterly throughout the 1994-95 fiscal year to the General Assembly by March 15, 1994, on the development and implementation of this special initiative, its biotechnology program grants to universities. These reports shall include the current number of enrollments and the capacity of enrollments in the biotechnology program in each of the universities, the number of faculty in the biotechnology program in each of the universities, whether and to what extent the enrollments, capacity, and number of faculty have changed in the last three academic years in the biotechnology program in each of the universities, how the funds allocated by this section are being used in each of the universities, and any other information that indicates whether these grants are accomplishing their purpose.

In awarding grant funds pursuant to this section, the Center shall ensure that the grant funds are distributed equally among the eligible universities."

Requested by: Representatives Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### ECONOMIC DEVELOPMENT FUNDS

Sec. 28.3. Section 310 of Chapter 321 of the 1993 Session Laws reads as rewritten:

"(a) Of the funds appropriated in this act to the Department of Commerce, three hundred thousand dollars (\$300,000) for the 1993-94 1994-95 fiscal year shall be allocated for the Land Loss Prevention Project, Inc., to provide free legal representation to ~~low-income~~ financially distressed ~~small~~ family farmers. The Land Loss Prevention Project, Inc., shall not use these funds to represent farmers who have income and assets that would make them financially ineligible for legal services pursuant to Title 45, Part 1611 of the Code of Federal Regulations. The Land Loss Prevention Project, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(b) Of the funds appropriated in this act to the Department of Commerce, two hundred fifty thousand dollars (\$250,000) for the 1993-94 1994-95 fiscal year shall be allocated for the North Carolina Coalition of Farm and Rural Families, Inc., for its Small Farm Economic Development Project. These funds shall be used to foster economic development within the State's rural farm communities by offering financial, marketing, and technical assistance to small and limited resource farmers. The North Carolina Coalition of Farm and Rural Families, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(c) Of the funds appropriated in this act to the Department of Commerce, ~~two seven~~ hundred thousand dollars (~~\$200,000~~) (\$700,000) for the 1993-94 1994-95 fiscal year shall be allocated to the North Carolina Institute for Minority Economic Development, Inc., to foster minority economic development within the State through policy analysis, information and technical assistance, and resource expansion. The North Carolina Institute for Minority Economic Development, Inc., shall research and identify key issues affecting the economic well-being of the State's ethnic minority community and issue annual reports with appropriate recommendations; provide information and technical ~~assistance to~~ assistance, training, and capacity-building for organizations with minority economic development-based projects in common areas of need and interests; develop a resource bank of data and information; facilitate training in appropriate areas of need; and provide technical assistance to minority construction contractors. The North Carolina Institute for Minority Economic Development, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds."

Requested by: Senators Martin of Pitt, Hoyle, Cochrane, Representatives Bowman, H. Hunter, Wright, Luebke

#### INDUSTRIAL RECRUITMENT COMPETITIVE FUND

Sec. 28.4. (a) Of the funds appropriated to the Department of Commerce in this act, the sum of seven million dollars (\$7,000,000) shall be allocated to the Industrial Recruitment Competitive Fund for the 1994-95

fiscal year to be used, notwithstanding the provisions of Section 314.3 of Chapter 321 of the 1993 Session Laws, to assist new and expanding businesses and industries. The Governor's guidelines and procedures for the commitment of monies from this Fund shall provide that existing businesses and industries be considered in the same manner and have the same access to the monies as new businesses and industries.

(b) In determining the allocation of these funds, the Department shall consider the extent to which a business uses recycled materials and the extent to which a business generates high levels of environmental pollution. Where the Department of Commerce disburses these funds to eligible recipients through units of local government, the Department shall develop procedural guidelines to assure that the requirements of the Local Government Budget and Fiscal Control Act are observed in the allocation and accounting of these funds.

Requested by: Representatives Nesbitt, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane  
MCNC GATEWAY FOR NCIHS

**Sec. 28.6.** Funds appropriated in this act to MCNC for Migration of Current Network to the North Carolina Information Highway System (NCIHS) shall be used as follows:

- (1) To cover the costs of connecting and operating the North Carolina Research and Education Network through the North Carolina Information Highway so that universities and research centers will continue to have the capability currently available through the North Carolina Research and Education Network,
- (2) For program support, and
- (3) For MCNC to serve as gateway to the North Carolina Information Highway for the 18 sites.

Requested by: Representatives Nesbitt, Redwine, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### EXPAND REGIONAL ECONOMIC DEVELOPMENT EFFORTS

**Sec. 28.7.** (a) *Regional Economic Development Commission Expansion Program:* The Department of Commerce shall develop a program for promoting the expansion of economic development efforts such that all counties in the State participate in and benefit from organized regional economic development activities. The Department shall encourage county participation in public/private partnerships for economic development through membership in regional economic development commissions. In developing the program, the Department shall identify those counties not participating in existing regional economic development commissions as of July 1, 1994. After consultation with appropriate parties in each nonparticipating county, the Department shall assign each nonparticipating county to either (i) a commission established under G.S. 158-8, (ii) a new regional commission made up of nonparticipating counties created in accordance with this section, or (iii) a regional economic development commission established under G.S. 158-8.1, 158-8.2, or 158-8.3, as appropriate. Regional economic development commissions created under

this section shall be subject to the provisions of Article 2 of Chapter 158 of the General Statutes and shall have the powers and duties authorized thereunder, in addition to powers and duties authorized under this section.

(b) *Scope*: This section applies to regional economic development commissions created under this section, and to the Piedmont Triad Partnership, the Carolinas Partnership, Inc., the Raleigh-Durham Regional Association, and the Global TransPark Development Zone established pursuant to Article 4 of Chapter 158 of the General Statutes. Except as otherwise provided in this section, this section shall not apply to regional economic development commissions established pursuant to G.S. 158-8.1, 158-8.2, and 158-8.3.

(c) *Requirements for regional commissions*: Notwithstanding G.S. 158-8, each regional economic development commission created pursuant to this section shall include a sufficient number of counties, and municipalities of those counties, to ensure that each new commission:

- (1) Is of adequate size in population and geographic scope to effectively undertake economic development activities, to market as a distinct and viable region for attraction of new investment, and to generate adequate local resources to effectively cooperate with the Department of Commerce;
- (2) Is economically integrated as determined by commuting patterns, economic base, economic interrelationships, major employers, or other indicators of economic integration; and
- (3) Has an identifiable focal point of economic activity, known as an economic engine or driver, within the regional boundaries on which to build an effective economic development and marketing strategy, such as a metropolitan area, a cluster of manufacturing or nonmanufacturing industries, a natural resource base, or other clearly identifiable economic resources.

(d) *Criteria for regional boundaries*: In facilitating the creation of regional economic development commissions under this section, the Department and the counties involved shall consider economic interrelationships, existing development organizations and relationships, natural boundaries, anticipated major projects, and other factors that promote effectiveness and efficiency and foster local cooperation.

(e) *State funding*: Regional economic development commissions created under this section shall receive State funds as follows. The Department shall allocate to each newly created regional economic development commission the sum of the allocations to each county that is a member of the commission. Each county's allocation shall be determined by dividing the county's distress factor by the sum of the distress factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this section, the term "distress factor" means a county's distress factor as calculated under G.S. 105-130.40(c). For counties that are assigned by the Department to regional economic development commissions established under G.S. 158-8, or to a regional economic development commission established under G.S. 158-8.1, 158-8.2, or 158-8.3, the Department shall allocate to each regional economic

development commission the funding share of each county that joins that commission pursuant to subsection (a) of this section.

(f) *Use of funds:* Funds allocated to a regional economic development commission created under this section shall be used for administrative and operating expenses of the commission, marketing, advertising, promotion, and economic development activities to secure jobs and new investment in the region served by the commission. In addition to the powers and duties authorized under Article 2 of Chapter 158, the newly created commissions may use funds for the following activities:

- (1) Marketing the region to promote new investment from out-of-state companies;
- (2) Promoting travel and tourism or natural resource-based attractions;
- (3) Trade missions;
- (4) Marketing and promoting existing industries;
- (5) Encouraging attraction or retention of entrepreneurial development;
- (6) Promoting and marketing local crafts, industries, or other specialized economic development opportunities; and
- (7) Research-related economic development activities such as industry sector studies for targeted marketing, buyer-supplier analyses for targeted marketing or to support existing industry, development of necessary supporting information and data, or linking the region with the Department of Commerce's Economic Development Information System.

(g) *Duties of the Department of Commerce:* The Department shall have the following duties under this section:

- (1) Actively assist each regional economic development commission, including those established under G.S. 158-8.1, 158-8.2, and 158-8.3, in organizing and carrying out its economic development activities. To this end, the Department shall:
  - a. Ensure that each commission is linked to the Economic Development Information System; and
  - b. Develop procedures that ensure that each region has maximum opportunity to attract new jobs and investment, that all inquiries from companies concerning location in North Carolina are fairly and equitably handled within the confines of the inquiring company's requirements and needs, and that all inquiries and prospective investments are handled efficiently and effectively.
- (2) Institute a process to organize programs and services in a manner that will assist each region in taking maximum advantage of potential development opportunities. This process shall include all of the following:
  - a. Integrating each regional economic development commission into the Economic Development Information System and the Geographic Information System;
  - b. Developing joint marketing strategies and materials for targeted industries, services, or promotional markets based on each region's strengths and priorities;



- c. Assigning an economic development specialist to work with each regional economic development commission;
  - d. Providing technical assistance and training, if needed, to help build regional capacity;
  - e. Developing cooperative marketing and advertising campaigns to ensure consistency of image and quality, and to secure discounts on media presentations; and
  - f. Customizing the services and programs within the Department, where practicable, to better link departmental resources with the diverse needs and opportunities within the boundaries of each regional commission.
- (3) Study and determine whether certain counties currently participating in existing commissions should be transferred to other regional commissions, and make recommendations to the 1995 General Assembly by January 15, 1995, regarding the advisability of such transfers and regarding the effectiveness of the current structure of regional commissions.
- (4) Recommend to the 1995 General Assembly by January 15, 1995, a strategy for reducing duplication and fragmentation in State-funded regional economic development organizations.

(h) As used in this subsection, the term "Authority" means the North Carolina Air Cargo Airport Authority doing business as the North Carolina Global TransPark Authority. For purposes of this section, the Global TransPark Development Zone is a regional economic development commission, except that no funds authorized under subsection (i) of this section shall be allocated by the Department to the Global TransPark Development Commission for the Global TransPark Development Zone because funds have been appropriated by the General Assembly for the same fiscal year to the Authority for administration of the Authority and to the Department for promotion of the Global TransPark.

(i) Of the funds appropriated in this act to the Department of Commerce, the sum of two million one hundred thousand dollars (\$2,100,000) shall be used for allocation to regional economic development commissions in accordance with this section. These funds shall not revert but shall remain available until used for the purposes set forth in this section.

(j) G.S. 158-8.1(a) reads as rewritten:

"(a) There is created the Western North Carolina Regional Economic Development Commission to serve Buncombe, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Polk, Rutherford, Swain, Transylvania, and Yancey ~~Counties~~. Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce."

(k) G.S. 158-8.2(a) reads as rewritten:

"(a) There is created the Northeastern North Carolina Regional Economic Development Commission to facilitate economic development and tourism development in Beaufort, Bertie, Camden, Chowan, Currituck,

Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington ~~Counties~~. Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce."

(l) G.S. 158-8.2(b) reads as rewritten:

"(b) The Commission shall consist of 17 members appointed as follows:

- (1) Five members shall be appointed by the Governor, including one developer of northeastern North Carolina, one banker, one county commissioner from Camden, Currituck, Pasquotank, or Perquimans Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law, and one county commissioner from Beaufort, Bertie, Chowan, or Martin ~~Counties~~; Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law;
- (2) Five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Dare, Hyde, Tyrrell, or Washington Counties;
- (3) Five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Halifax, Hertford, Gates, or Northampton Counties;
- (4) The Secretary of Commerce or a designee; and
- (5) The Secretary of Environment, Health, and Natural Resources, or a designee.

Any person appointed to the Commission in a categorical appointment as a county commissioner may hold such office in addition to the offices permitted by G.S. 128-1.1."

(m) G.S. 158-8.3(a) reads as rewritten:

"(a) There is created the Southeastern North Carolina Regional Economic Development Commission to serve Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Pender, Richmond, Robeson, Sampson, and Scotland ~~Counties~~. Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce."

Requested by: Representatives Nesbitt, H. Hunter, Bowman, Wright, Senators Martin of Pitt, Cochrane

#### REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS

Sec. 28.8. (a) G.S. 158-8.1(a) reads as rewritten:

"(a) There is created the Western North Carolina Regional Economic Development Commission to serve Buncombe, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Polk, Rutherford, Swain, Transylvania, and Yancey Counties. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year."

(b) G.S. 158-8.1(d) reads as rewritten:

"(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem ~~and travel expenses~~ of one hundred dollars (\$100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars (\$100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5."

(c) G.S. 158-8.2(a) reads as rewritten:

"(a) There is created the Northeastern North Carolina Regional Economic Development Commission to facilitate economic development and tourism development in Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year."

(d) G.S. 158-8.2(h) reads as rewritten:

"(h) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem ~~and travel expenses~~ of one hundred dollars (\$100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars (\$100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5. Members of the advisory boards who are State employees shall receive travel expenses as provided in G.S. 138-6 for participating in meetings and other official activities authorized by the Commission. Other members of the advisory boards shall receive per diem and travel expenses as provided in G.S. 138-5 for participating in meetings and other official activities authorized by the Commission."

(e) G.S. 158-8.3(a) reads as rewritten:

"(a) There is created the Southeastern North Carolina Regional Economic Development Commission to serve Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Pender, Richmond, Robeson, Sampson, and Scotland Counties. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year."

(f) G.S. 158-8.3(d) reads as rewritten:

"(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem ~~and travel expenses~~ of one hundred dollars (\$100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars (\$100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5."

Requested by: Representatives James, Bowman, Wright, Senators Martin of Pitt, Cochrane

#### NORTHEASTERN REGIONAL COMMISSION

Sec. 28.9. G.S. 158-8.2(g) reads as rewritten:

"(g) ~~The Governor shall appoint and set the salary of a Director of Economic Development who shall coordinate the Commission's activities with regard to the economic development program. The Governor shall appoint and set the salary of a Director of Tourism who shall coordinate the Commission's activities with regard to the tourism program.~~

Within the limits of funds available, the Commission may hire and fix the compensation of any ~~other~~ personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. The Commission may carry out the provisions of any contracts as it may enter.

Within the limits of funds available, the Commission may lease, rent, or purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment."

Requested by: Senators Martin of Pitt, Cochrane, Hoyle, Representatives Bowman, H. Hunter, Wright

#### POLYMERS EXTENSION PROGRAM

Sec. 28.11. (a) Four hundred thousand dollars (\$400,000) appropriated to the Department of Commerce in this act for the 1994-95 fiscal year shall be transferred to the Board of Governors of The University of North Carolina to be used at the University of North Carolina at Charlotte



for the operating expenses of a polymers extension program, a program involving the Industrial Extension Service of North Carolina State University, the University of North Carolina at Charlotte, and the polymer industry to expand the educational, applied research, and technical assistance regarding the State's polymers processing industry.

Requested by: Senators Plyler, Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Wright

#### TRAVEL AND TOURISM AREA PROMOTER

**Sec. 28.12.** (a) The additional position of Travel and Tourism Area Promoter is added to the Division of Travel and Tourism in the Department of Commerce.

(b) Funds appropriated to the Department of Commerce in this act for fiscal year 1994-95 in the amount of thirty-six thousand five hundred dollars (\$36,500) shall be used for the position authorized in this section.

Requested by: Senators Plyler, Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Wright

#### RURAL TOURISM DEVELOPMENT FUNDS

**Sec. 28.13.** Of the funds appropriated in this act from the General Fund to the Department of Commerce for the 1994-95 fiscal year, the sum of four hundred thousand dollars (\$400,000) shall be used for the Rural Tourism Development Grant Program. The Department shall establish and implement this Program to provide grants to local governments and nonprofit organizations to encourage the development of new tourism projects and activities in rural areas of the State. Grant funds shall not be allocated for projects or activities eligible to receive funds from the Department's Tourism Promotion Grant Program. The Secretary shall establish guidelines for eligibility to receive grants under the Rural Tourism Development Grant Program. No recipient or new tourism project shall receive a total of more than fifty thousand dollars (\$50,000) of these grant funds for the 1994-95 fiscal year.

Requested by: Representatives H. Hunter, Bowman, Wright, Senators Martin of Pitt, Cochrane

#### SMALL BUSINESS SURETY BONDS FUNDS CONTINGENCY

**Sec. 28.14.** The funds appropriated in this act to the Department of Commerce for the Small Business Surety Bond Fund established in Part 16 of Article 10 of Chapter 143B of the General Statutes shall be contingent upon the ratification of House Bill 2057 by the 1993 General Assembly, Regular Session 1994.

Requested by: Representatives Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### EXPAND NORTH CAROLINA INDUSTRIAL COMMISSION

**Sec. 28.15.** (a) G.S. 97-77 reads as rewritten:

*"§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman."*



(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of ~~three~~ seven commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission, one for a term of two years, one for a term of four years, and one for a term of six years. Of the additional appointments made in 1994, one shall be for a term expiring June 30, 1996, one for a term expiring June 30, 1998, and two for terms expiring June 30, 2000. Upon the expiration of each term as above mentioned, the Governor shall appoint a successor for a term of six years, and thereafter the term of office of each commissioner shall be six years. Not more than ~~one appointee~~ three appointees shall be ~~a person~~ persons who, on account of ~~his~~ their previous ~~vocation~~, vocations, employment or affiliations, can be classed as ~~a representative~~ representatives of employers, and not more than ~~one appointee~~ three appointees shall be ~~a person~~ persons who, on account of ~~his~~ their previous ~~vocation~~, vocations, employment or affiliations, can be classed as ~~a representative~~ representatives of employees.

(b) One member, to be designated by the Governor, shall act as chairman. The chairman shall be the chief judicial officer and the chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to the provisions of Chapter 126 of the General Statutes and the rules and policies of the State Personnel Commission. Notwithstanding the provisions of this Chapter, the chairman shall have such authority as is necessary to direct and oversee the Commission. The chairman may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the chairman may hire or fire personnel and transfer personnel within the Industrial Commission.

The Governor may designate one vice-chairman from the remaining ~~two~~ commissioners. The vice-chairman shall assume the powers of the chairman upon request of the chairman or when the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be relinquished immediately upon the return of the chairman or at the request of the chairman."

(b) This section becomes effective August 1, 1994, and applies to appointments made on and after that date.

Requested by: Representatives Alphin, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### ECONOMIC DEVELOPMENT OF DUPLIN COUNTY

**Sec. 28.16.** If G.S. 160A-457.1 or any other provision of Part 8 of Article 19 of Chapter 160A of the General Statutes, read together with G.S. 160A-360(a), limits the territory in which the Town of Faison may use Community Development Block Grant funds, then notwithstanding G.S. 160A-360(a), the Town of Faison may use such funds for financing of extension of natural gas lines from Mt. Olive to the Bowden area.

Requested by: Representatives Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

**CENTER FOR COMMUNITY SELF-HELP FUNDS**

**Sec. 28.17.** (a) Of the funds appropriated in this act to the Department of Commerce, the sum of five million dollars (\$5,000,000) for the 1994-95 fiscal year shall be allocated to the Center for Community Self-Help to further a statewide program of lending for home ownership throughout North Carolina. These funds will be leveraged on a ten-to-one basis, generating at least ten dollars (\$10.00) of nontraditional home loans for every one dollar (\$1.00) of State funds. Payments of principal shall be available for further loans or loan guarantees.

(b) The Center for Community Self-Help shall submit, within 180 days after the close of its fiscal year, audited financial statements to the State Auditor. All records pertaining to the use of State funds shall be made available to the State Auditor upon request. The Center for Community Self-Help shall make quarterly reports on the use of State funds to the State Auditor, in form and format prescribed by the State Auditor or his designee. The Center for Community Self-Help shall make a written report by May 1 of each year for the next three years to the General Assembly on the use of the funds allocated under this section.

(c) The Center for Community Self-Help shall report to the Joint Legislative Commission on Governmental Operations, the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Department of Commerce on a quarterly basis for the next three years.

(d) The Office of the State Auditor may conduct an annual end-of-year audit of the revolving fund for economic development lending created by this appropriation for each year of the life of the revolving fund.

(e) If the Center for Community Self-Help dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State and shall refrain from disposing of the revolving fund assets without approval of the State Treasurer.

(f) The Office of State Budget and Management shall disburse this appropriation within 15 working days of the receipt of a request for the funds from the Center for Community Self-Help. The request shall include a commitment of the leveraged funds by the Center for Community Self-Help or its affiliates.

Requested by: Senator Plyler

**UNINSURED EMPLOYERS' FUND**

**Sec. 28.19.** Of the funds appropriated in this act to the Department of Commerce, the sum of three hundred thousand dollars (\$300,000) shall be allocated to the Uninsured Employers' Fund for fiscal year 1994-95 to carry out the purposes of the Fund as provided under Chapter 97 of the General Statutes.

Requested by: Senators Martin of Pitt, Cochrane, Representatives Bowman, H. Hunter, Wright

**FRAUD INVESTIGATION FUNDS**

**Sec. 28.20** Of the funds appropriated in this act to the Department of Commerce for the North Carolina Industrial Commission for the 1994-95

fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be transferred to the Department of Insurance to be used to investigate suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, pursuant to G.S. 97-88.2, as enacted by Chapter 679 of the 1993 Session Laws.

Requested by: Senators Cochrane, Daniel, Folger, Kaplan, Lee, Martin of Guilford, Sands, Seymour, Shaw, Walker, & Ward  
**PIEDMONT SPORTS AND ENTERTAINMENT FACILITIES STUDY COMMISSION**

**Sec. 28.21.** (a) The Piedmont Sports and Entertainment Study Commission is created. The Commission shall consist of 35 members. The boards of county commissioners of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties shall, each, appoint two members of the Commission; one of whom shall be a county commissioner of that county and one of whom is a resident of that county recommended by the chamber of commerce serving that county. Eleven members shall be appointed by the Chair of the Commission. The chair and vice-chair of the Piedmont State Legislative Caucus, as the Caucus existed during the 1994 Regular Session, shall be ex officio members of the Commission and shall serve, respectively, as the chair and vice-chair of the Commission.

(b) The Commission shall study the need for and feasibility of creating regional sports and entertainment facilities to serve the Piedmont area of the State; and, if the Commission determines the facilities are needed and their creation feasible, the best method to establish an Authority to implement these facilities.

(c) The Commission shall submit a report of its findings and recommendations to the General Assembly on or before the first day the 1995 General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its report, the Commission shall terminate.

(d) The Commission may meet at any time upon the call of the chair. The Commission may meet, with the approval of the Legislative Services Commission, in the State Legislative Building or the Legislative Office Building.

(e) Notwithstanding any other provision of law, members of the Commission shall receive no per diem compensation, but shall receive reimbursement of subsistence and travel expenses, as provided by law.

(f) The Commission may contract for professional, clerical, or consultant services. The Department of Commerce shall assign professional and clerical staff to assist in the work of the Commission.

(g) When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the original appointing authority employing the same criteria as used in the original appointment.

(h) From the funds appropriated to the Department of Commerce for fiscal year 1994-95, the sum of twenty-five thousand dollars (\$25,000) shall be used for the expenses of the Commission.

## PART 29. DEPARTMENT OF LABOR

Requested by: Representative Bowman, Senator Martin of Pitt  
PRIVATE PERSONNEL SERVICE ADVISORY COUNCIL

Sec. 29. (a) G.S. 95-47.4(b) reads as rewritten:

"(b) Any contract that obligates an applicant to pay a fee to the private personnel service shall include:

- (1) The name, address and telephone number of the private personnel service;
- (2) The name of the applicant;
- (3) The date the contract was signed;
- (4) A clear schedule of the fees to be charged to the applicant at various salary levels;
- (5) A clear explanation of when the applicant becomes obligated to pay a fee;
- (6) A clear refund policy (or no refund policy) that conforms to the requirements of G.S. 95-47.4(f) and (g);
- (7) If the applicant is obligated whether or not the applicant accepts employment, a clear explanation of the services provided and a statement that the private personnel service does not guarantee that the applicant will obtain employment as a result of its services;
- (8) A statement, in a type size no smaller than nine point, directly above the place for the applicant's signature, that reads as follows: 'I have read and received a copy of this CONTRACT, which I understand makes me legally obligated to pay a fee under conditions outlined ~~below~~ above.' In the preceding statement the word 'CONTRACT' and no others shall be in all capitals; and
- (9) A statement that the private personnel service is licensed and regulated by the Commissioner and the address at which a copy of laws and regulations governing private personnel services may be obtained."

(b) G.S. 95-47.7(a) reads as rewritten:

"(a) There is hereby established the North Carolina Private Personnel Service Advisory Council. The Council shall be composed of 12 members appointed by the Commissioner. Each member of the Council shall be domiciled in this State for at least three years immediately preceding his appointment and be of good moral character. At least five members shall have occupied for at least three years immediately preceding their appointment, and shall occupy at the time of appointment, executive or managerial positions in the private personnel service industry in North Carolina; and at least three shall have occupied, for at least three years immediately preceding their appointment, executive or managerial positions as personnel officers in companies which regularly utilize the services of private personnel services in obtaining employees. Members of the Council shall serve without ~~salary~~ salary, but shall be paid per diem, subsistence, and travel allowance in accordance with Chapter 138 of the General Statutes."

(c) This section is effective upon ratification of this act.

## TITLE II. CAPITAL IMPROVEMENTS

## PART 30. INTRODUCTION

**Sec. 30.** The appropriations made by the 1994 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

## PART 31. PROCEDURES FOR DISBURSEMENTS

**Sec. 31.** The appropriations made by the 1994 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency, until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 1994 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act.

## PART 32. CAPITAL IMPROVEMENTS/GENERAL FUND

**Sec. 32.** Appropriations are made from the General Fund for the 1994-95 fiscal year for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

1994-95	
GENERAL ASSEMBLY (Total)	
1. Complete Renovation of HVAC System	6,200,000
	6,200,000



DEPARTMENT OF ADMINISTRATION (Total)	51,364,500
1. Reserve for Repairs/Renovation of the Old Education and Revenue Buildings	20,000,000
2. Natural Science Museum and Wet Lab Collection	30,934,500
3. State Government Visitors' Center-Planning	430,000
DEPARTMENT OF AGRICULTURE (Total)	10,120,950
1. Eastern North Carolina Agricultural Center - Phase I Completion	3,600,000
2. Cattle and Livestock Exposition Center	737,350
3. Dairy Milking Parlor - Umstead Research Station - Supplement	
Requirements	\$387,000
Timber Receipts	<u>387,000</u>
State Appropriation	
4. Southeastern Farmer's Market - Development	3,600,000
5. Western North Carolina Agricultural Facilities Development	1,900,000
6. Tidewater Research Station	283,600
UNIVERSITY - BOARD OF GOVERNORS (Total)	47,300,000
1. UNC-Chapel Hill - Planning funds for Law School	1,000,000
2. UNC-Chapel Hill - Institute of Government - Renovation/Planning	700,000
3. UNC-Chapel Hill - Renovate Hill Hall	850,000
4. UNC-Chapel Hill - School Leadership Academy Facility - Planning	100,000
5. N.C. State University - Centennial Center	6,500,000
6. N.C. State University - Agricultural Extension - Planning and Construction of 4-H Youth Development Center - Northeastern North Carolina - Planning/Site Preparation	500,000
7. N.C. State University Ag Extension: 4-H Youth Development (ADA)	2,000,000
8. UNC-Asheville - Kellogg Center	250,000
9. UNC-Charlotte - Library Planning Funds	900,000
10. UNC-Greensboro - University Center	5,000,000
11. School of the Arts - Student Activities Center	2,250,000
12. East Carolina University - Life Sciences Building	4,850,000
13. Winston-Salem State University - Land Acquisition	1,000,000
14. Fayetteville State University - Fine Arts Center Planning	750,000

15. N.C. Central University Biotechnology	8,000,000
16. N.C. A. & T. - Land Acquisitions	1,000,000
17. Appalachian State University Convocation Center-Planning/Design/Site Preparation	9,750,000
18. UNC-Wilmington - Marine Sciences Building- Planning Supplement	1,100,000
19. Pembroke - Sampson Hall Business Building Renovations	800,000
DEPARTMENT OF COMMUNITY COLLEGES (Total)	300,000
1. Center for Applied Textile Technology - Renovations, Parking, and Site Improvements	300,000
DEPARTMENT OF CULTURAL RESOURCES (Total)	9,720,000
1. Fort Fisher State Historic Site Erosion Control Measures	
Requirements	\$8,340,000
Receipts-Federal	<u>4,170,000</u>
State Appropriation	4,170,000
2. Elizabeth II State Historic Site	5,000,000
3. Spencer Shops	300,000
4. Museum of the Cape Fear - Branch of the State Museum of History	250,000
DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES (Total)	24,224,000
1. North Carolina Aquariums - Planning	950,000
2. Water Resources (Civil Works) Development Projects	2,750,000
3. Wilmington Harbor Ocean Bar Deepening	10,906,000
4. Falls Lake Recreation/Jordan Water Supply - Repayment	9,527,000
5. Bulkhead Project - Town of Oriental	91,000
DEPARTMENT OF HUMAN RESOURCES (Total)	3,224,100
1. Detention Center, Buncombe County Capital Needs	205,000
2. Student Activity/Recreation Complex at the Eastern N.C. School for the Deaf	3,019,100
DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY (Total)	62,500
1. Beulaville Armory - Renovations	50,000
2. Warsaw Armory - Renovations	12,500
STATE BUDGET (Total)	250,000
1. Prison Chapels Reserve	250,000

TOTAL CAPITAL IMPROVEMENTS/GENERAL FUND \$152,766,050

### PART 33. CAPITAL IMPROVEMENTS/HIGHWAY FUND

Department of Transportation

1. Reserve for Capital Improvements 2,500,000

Appropriations for Other State Agencies

1. Crime Control and Public Safety  
Leaking Underground Storage Tank 500,000

GRAND TOTAL

CAPITAL IMPROVEMENTS/HIGHWAY FUND \$ 3,000,000

### PART 34. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Senators Conder, Plyler

#### RICHMOND EDUCATIONAL CENTER FUNDS

Sec. 34. Funds appropriated in this act to the Office of State Budget and Management for the 1994-95 fiscal year for Richmond County to use to renovate the Leak Street Educational Center for use as a facility to help at-risk children through counseling, job interview training, and computer training shall be allocated to Richmond County provided that the funds are matched on the basis of one dollar (\$1.00) of non-State funds for every one dollar (\$1.00) of State funds.

Requested by: Senator Plyler

#### WORLD LANGUAGE CENTER FUNDS

Sec. 34.1. Funds appropriated in this act to the Office of State Budget and Management for the 1994-95 fiscal year for the North Carolina Center for World Languages and Cultures, Inc., shall be used for planning of the Center. The funds may be used for concept development, concept refinement, preliminary specifications and drawings, development of complete and comprehensive plan and specifications, and preliminary infrastructure development.

Requested by: Senators Richardson, Blackmon, Odom, Plyler, Winner of Mecklenburg, Martin of Pitt, Cochran, Representatives Easterling, Black, Lemmond, McLaughlin, Dickson, Bowman, H. Hunter, Wright

#### DISCOVERY PLACE/CAPITAL FUNDS

Sec. 34.3. Of the funds appropriated in this act to the Department of Agriculture for the 1994-95 fiscal year the sum of two million six hundred thousand dollars (\$2,600,000) shall be used for capital expenses of Discovery Place in Charlotte. These funds shall be matched on the basis of three dollars (\$3.00) of non-State funds for every one dollar (\$1.00) of State funds.

## PART 35. GENERAL GOVERNMENT

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**EXPENDITURE OF FUNDS FROM RESERVE FOR REPAIRS AND RENOVATIONS**

**Sec. 35.** Section 22 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"Sec. 22. Of the funds in the Reserve for Repairs and Renovations for the ~~1993-94~~ 1994-95 fiscal year, fifty-five percent (55%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations to General Fund supported facilities and related infrastructure in The University of North Carolina, including the North Carolina School of Science and Math, and forty-five percent (45%) shall be allocated to the Office of State Budget and Management for necessary repairs and renovations to all other General Fund supported facilities and related infrastructure. From this Reserve the Board of Governors may expend thirty-three million dollars (\$33,000,000), and the Office of State Budget and Management may expend twenty-seven million dollars (\$27,000,000) for repairs and renovation, improvements to roads and walks, architectural barrier removal, and North Carolina Occupational Safety and Health Act projects.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall submit to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office, for their review, the proposed allocation of these funds. Subsequent changes in the proposed allocations shall be reported prior to expenditure to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office."

## PART 36. DEPARTMENT OF CULTURAL RESOURCES

Requested by: Senator Martin of Guilford  
**AFRICAN-AMERICAN TOURISM SITE COMMITTEE**

**Sec. 36.** (a) The Secretary of the Department of Cultural Resources is encouraged to appoint an Advisory Committee on Tourism at North Carolina Sites Highlighting African-American Accomplishments. Should such a committee be appointed, the Secretary is encouraged to include as members persons who:

- (1) Directly participated in the planning, leadership, or implementation of the North Carolina sit-in movement of 1960;
- (2) Have done scholarly work related to the Civil Rights Movement of the 1960s as was manifested in this State;

- (3) Are knowledgeable about North Carolina's travel and tourism industry;
  - (4) Have an understanding of and appreciation for the contributions made by African-Americans relative to development and evolution of this State; or
  - (5) Are members of the North Carolina General Assembly.
- (b) The committee, should it be appointed, is encouraged to study and make recommendations to the Secretary of Cultural Resources, the Governor, and the General Assembly on all of the following:
- (1) Programming, activities, and site development that will best enhance ongoing public visitation and attract national and international travel and tourism attention for sites that highlight and reflect African-American accomplishments, while placing initial emphasis on those sites that have been designated as State Historic Sites.
  - (2) Related to the State's role in supporting programming and activities, equipping, assisting with renovations, or otherwise promoting efforts to create a civil rights center and museum commemorating the sit-in movement of the 1960s. Such recommendations, if any, should be designed to promote the general public's understanding of and appreciation for the sit-in movement and other civil rights efforts encompassing the 1960s.
  - (3) Regarding the expenditure of any State funds related to a civil rights center and museum.

Requested by: Senators Daniel, Plyler, Representatives Diamont, Nesbitt, H. Hunter, Bowman

#### LOCAL HISTORICAL ORGANIZATIONS GRANTS

**Sec. 36.1.** Of the funds appropriated in this act for the 1994-95 fiscal year to the Department of Cultural Resources the sum of two million dollars (\$2,000,000) shall be distributed as grants-in-aid to nonprofit historical organizations, nonprofit museums, or local governmental entities on a competitive basis in accordance with administrative guidelines issued by the Secretary of the Department of Cultural Resources. The purpose of the grants shall be to encourage, through the use of grants-in-aid, the protection, preservation, and interpretation of historic assets with local or regional significance. Priority consideration shall be given to the local historical organization's educational objectives. Grants shall be limited to amounts of one hundred thousand dollars (\$100,000) or less.

Requested by: Senators Daniel, Plyler, Representatives Diamont, Nesbitt, H. Hunter, Bowman

#### LOCAL CULTURAL AND ARTISTIC ORGANIZATIONS GRANTS

**Sec. 36.2.** Of the funds appropriated in this act for the 1994-95 fiscal year to the Department of Cultural Resources the sum of two million dollars (\$2,000,000) shall be distributed as grants-in-aid to nonprofit local cultural or artistic organizations or local governmental entities on a competitive basis in accordance with administrative guidelines issued by the Secretary of the Department of Cultural Resources. The purpose of the grants shall be to



support and promote, through the use of grants-in-aid, local cultural and artistic organizations with local or regional significance. Priority consideration shall be given to the local cultural or artistic organization's educational objectives. Grants shall be limited to amounts of one hundred thousand dollars (\$100,000) or less.

Requested by: Representatives Nesbitt, Diamont

#### ART MUSEUM AMPHITHEATER

**Sec. 36.3.** The Department of Cultural Resources, North Carolina Museum of Art, may use additional gifts and grants to supplement the Art Museum Amphitheater capital project authorized in Section 4 of Chapter 1044 of the 1991 Session Laws, Regular Session 1992. The total scope of the project shall not exceed two million dollars (\$2,000,000) and shall not include any appropriated State funds.

### PART 37. COLLEGES AND UNIVERSITIES

Requested by: Senators Warren, Martin of Pitt, Ward, Representatives Black, Rogers, Nesbitt, Diamont

#### ECU MEDICAL SCHOOL FUNDS

**Sec. 37.** There is appropriated to the Board of Governors of The University of North Carolina from Medicare reimbursements being held in the special fund account on deposit with the State Treasurer created pursuant to Section 87(a)(3) of Chapter 321 of the 1993 Session Laws the sum of five million fifty-four thousand six hundred sixty-five dollars (\$5,054,665) for the 1994-95 fiscal year which shall be allocated by the Board of Governors for the East Carolina School of Medicine as follows:

- (1) \$2,300,000 for construction of a medical waste incinerator;
- (2) \$1,574,000 for a linear accelerator; and
- (3) \$1,180,665 for clinic renovations.

Requested by: Senator Warren

#### 4-H YOUTH DEVELOPMENT CENTER FUNDS

**Sec. 37.1.** Of the funds appropriated in this act from the General Fund to the Board of Governors of The University of North Carolina the sum of five hundred thousand dollars (\$500,000) for the 1994-95 fiscal year shall be used for the planning and construction of a 4-H Center, provided that these funds are matched on the basis of one dollar (\$1.00) of non-State funds for every one dollar (\$1.00) of State funds not to include federal appropriations over a period of four years beginning the first year of operation. The appropriated funds will be disbursed based upon the approval of the design of the 4-H Center by the State of North Carolina.

Requested by: Senators Daniel, Plyler

#### UNC-G UNIVERSITY CENTER FUNDS

**Sec. 37.2.** Of the funds appropriated in this act to the Board of Governors of The University of North Carolina for UNC-Greensboro - University Center, the sum of three million six hundred thousand dollars (\$3,600,000) shall be available for land needs and the sum of one million

four hundred thousand dollars (\$1,400,000) shall be available to help support the Spring Garden Street traffic and safety project.

Requested by: Senator Martin of Guilford

#### **NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY FUNDS**

**Sec. 37.3.** Of the funds appropriated to the Board of Governors of The University of North Carolina in Section 6 of Chapter 561 of the 1993 Session Laws for the Applied Manufacturing and Education Center affiliated with North Carolina Agricultural and Technical State University that are unencumbered as of the effective date of this act, the sum of four hundred fifty thousand dollars (\$450,000) may be used by the Board for planning, development, and one-time initial costs of the Center. The Board of Governors shall present a plan for the use of the funds to the Joint Legislative Commission on Governmental Operations. The plan shall include all financial, organizational, and legal arrangements pertaining to the use of these funds and the proposed use of the balance of the three million five hundred thousand dollars (\$3,500,000) appropriated for this purpose. The plan shall include projections and plans for the operation of the facility, including operating costs.

#### **PART 38. DEPARTMENT OF TRANSPORTATION**

Requested by: Senator Lee, Representatives McAllister, McLaughlin  
**RESERVE FOR CAPITAL IMPROVEMENTS-HIGHWAY FUND**

**Sec. 38.** There is created in the Highway Fund a reserve for capital improvements in the amount of two million five hundred thousand dollars (\$2,500,000). These funds may be used by the Department of Transportation for capital improvements and for repairs and renovations.

#### **PART 39. DEPARTMENT OF HUMAN RESOURCES**

Requested by: Representatives Easterling, Nye, Nesbitt, Diamont, Senators Daniel, Plyler

#### **CAPITAL FUNDS FOR MENTAL HEALTH INSTITUTIONS**

**Sec. 39.** The Office of State Budget and Management shall review the capital needs of the State Mental Health, Developmental Disabilities, and Substance Abuse Facilities, and shall ensure that these needs are considered in the expenditure of Repairs and Renovations funds.

#### **PART 40. DEPARTMENT OF AGRICULTURE**

Requested by: Representatives James, Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

#### **CATTLE AND LIVESTOCK EXPOSITION CENTER**

**Sec. 40.** Of the funds appropriated in this act to the Department of Agriculture for the 1994-95 fiscal year, the sum of seven hundred thirty-seven thousand three hundred fifty dollars (\$737,350) shall be used for planning the construction of the Cattle and Livestock Exposition Center in

Alamance County. The Center will house livestock shows and exhibits, educational programs, and a laboratory for embryo transfer research, semen evaluation, and livestock blood work.

#### PART 41. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Representatives Bowman, H. Hunter, Wright, Senators Martin of Pitt, Cochrane

##### WATER RESOURCES DEVELOPMENT PROJECTS FUNDS

**Sec. 41.** (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1994-95 fiscal year the sum of two million seven hundred fifty thousand dollars (\$2,750,000) shall be used for water resources development projects. The Department shall allocate funds for the following projects whose estimated costs are as indicated:

- |  |            |
|--|------------|
| (1) Wilmington Harbor<br>Deepening Study                         | \$ 300,000 |
| (2) Wilmington Harbor<br>38-ft. Navigation                       | 400,000    |
| (3) Aquatic Plant Control<br>(Statewide) includes<br>Lake Gaston | 150,000    |
| (4) Carolina Beach Renourishment<br>(New Hanover County)         | 900,000    |
| (5) Dare County Beaches<br>Feasibility Study                     | 200,000    |
| (6) State-Local Projects   | 800,000    |

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1994-95 fiscal year, or if the projects listed in subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund:

- (1) Corps of Engineers project feasibility studies, or
- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1994-95, or
- (3) State-local Water Resources Development Projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1995-96 fiscal year.

(c) The Department shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the

Fiscal Research Division, and the Office of State Budget and Management. Each report shall include:

- (1) All projects listed in this section;
- (2) The estimated cost of each project;
- (3) The date that work on each project began or is expected to begin;
- (4) The date that work on each project was completed or is expected to be completed; and
- (5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

## PART 42. GENERAL CAPITAL PROVISIONS

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**RESERVE FOR ADVANCE PLANNING**

**Sec. 42.** The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on how it intends to spend funds from the Reserve for Advance Planning at least 45 days before it spends the funds.

The Office of State Budget and Management shall also report the results of any project on which it uses funds from the Reserve for Advance Planning to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUND**

**Sec. 42.1.** When each capital improvement project appropriated by the 1993 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under a construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**PROJECT COST INCREASE**

**Sec. 42.2.** Upon the request of the administration of a State agency, department, or institution, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**NEW PROJECT AUTHORIZATION**

**Sec. 42.3.** Upon the request of the administration of any State agency, department, or institution, the Governor may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Provided, however, that if the Director of the Budget authorizes the construction of such a capital improvement project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS**

**Sec. 42.4.** Funds which become available by gifts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget. The Director of the Budget may make allocations from the Advance Planning Fund for advance planning through the working drawing phase of capital improvement projects, except that this revolving fund may not be utilized by the Board of Governors of The University of North Carolina or the State Board of Community Colleges.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**APPROPRIATIONS LIMITS/REVERSION OR LAPSE**

**Sec. 42.5.** Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 1993 General Assembly may be expended only for specific projects set out by the 1993 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 1993 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the



direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

### TITLE III. MISCELLANEOUS OPERATING AND CAPITAL APPROPRIATIONS PROVISIONS

#### PART 43. MISCELLANEOUS PROVISIONS

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Daniel  
**EXECUTIVE BUDGET ACT APPLIES**

**Sec. 43.** The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
**COMMITTEE REPORT**

**Sec. 43.1.** (a) The Senate and House Conference Report on Base Budget Reductions and Expansion Budget, dated July 16, 1994, which was distributed in the Senate and House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act.

(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 1993-95 fiscal biennium is a line item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The General Assembly amended the itemized budget requests submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, in accordance with the steps that follow, and the line item detail in the budget enacted by the General Assembly may be derived accordingly:

- (1) Negative reserves set out in the submitted budget were deleted and the totals were increased accordingly.
- (2) The base budget was adjusted in accordance with the base budget cuts and additions that were set out in the The Senate and House Conference Report on Base Budget Reductions and Expansion Budget, dated July 16, 1994.
- (3) The expansion budget items were added in accordance with the The Senate and House Conference Report on Base Budget

Reductions and Expansion Budget, dated July 16, 1994. Some of those expansion budget items were in the budget submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission.

Expansion budget items that were funded from new receipts are included in the budget enacted by the General Assembly with program-level detail.

- (4) Transfers of funds supporting programs were made in accordance with the The Senate and House Conference Report on Base Budget Reductions and Expansion Budget, dated July 16, 1994, and any accompanying correction sheets.

The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
MOST TEXT APPLIES ONLY TO 1994-95

**Sec. 43.2.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
1993-94 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

**Sec. 43.3.** (a) Except where expressly repealed or amended by this act, the provisions of Chapters 321, 561, and 591 of the 1993 Session Laws, and Chapter 24 of the Session Laws of the 1994 Extra Session remain in effect.

(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1994-95 fiscal year in Chapters 321 and 561 of the 1993 Session Laws, and Chapter 24 of the Session Laws of the 1994 Extra Session, that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
EFFECT OF HEADINGS

**Sec. 43.4.** The headings to the titles, parts, and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
SEVERABILITY CLAUSE

**Sec. 43.5.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senators Daniel, Plyler, Representatives Nesbitt, Diamont  
EFFECTIVE DATE

**Sec. 43.6.** Except as otherwise provided, this act becomes effective July 1, 1994.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

H.B. 589

## CHAPTER 770

### AN ACT TO AMEND CHAPTER 576 OF THE 1993 SESSION LAWS CONCERNING THE APPEALS PANEL DURING THE FISHERIES MORATORIUM.

*The General Assembly of North Carolina enacts:*

**Section 1.** Subsection (d) of Section 3 of Chapter 576 of the 1993 Session Laws (1994 Regular Session) reads as rewritten:

"(d) During the moratorium, there shall be an Appeals Panel to consider license applications for new licenses.

- (1) The Appeals Panel shall consist of the ~~Fisheries Director~~, Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources or the Director's designee, the Chairman of the Marine Fisheries ~~Commission~~, Commission or the Chairman's designee, and one other person selected by the Cochairs of the Joint Legislative Commission on Seafood and Aquaculture to review hardship or emergency license cases.
- (2) The Marine Fisheries Commission shall adopt temporary rules to govern the operation of the Appeals Panel. The Appeals Panel is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Appeals Panel shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes.
- (3) The Appeals Panel may grant a license if it finds that the denial of the license application would create an emergency or hardship on the individual or the State. In no event shall the Appeals Panel grant a license when the total number of licenses in the specific category would exceed the number of licenses in effect on June 30, 1994.
- (4) ~~The Appeals Panel~~ Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources may grant an emergency temporary license due to death, illness, or incapacity, for a period not to exceed 30 days. Emergency temporary licenses shall be limited to vessel crab licenses authorized under G.S. 113-153.1(d)."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

H.B. 1319

## CHAPTER 771

AN ACT TO REAUTHORIZE THE MENTAL HEALTH STUDY COMMISSION; TO CREATE THE PUBLIC HEALTH STUDY COMMISSION; TO CREATE THE ELECTION LAWS REVIEW COMMISSION; TO EXTEND STUDY REPORT DEADLINES; AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY INSURANCE FRAUD.

*The General Assembly of North Carolina enacts:*

### PART I.-----MENTAL HEALTH STUDY COMMISSION

(H.B. 305 - Lutz, S.B. 400 - Harris)

**Sec. 1.1.** The Mental Health Study Commission, established and structured by 1973 General Assembly Resolution 80; Chapter 806, 1973 Session Laws; Chapter 185, 1975 Session Laws; Chapter 184, 1977 Session Laws; Chapter 215, 1979 Session Laws; 1979 General Assembly Resolution 20; Chapter 49, 1981 Session Laws; Chapter 268, 1983 Session Laws; Chapter 792, 1985 Session Laws; Chapter 873, 1987 Session Laws; Chapter 802, 1989 Session Laws; and Chapter 754, 1991 Session Laws, is reestablished and authorized to continue in existence until July 1, 1995.

**Sec. 1.2.** The continued Mental Health Study Commission shall have all the powers and duties of the original Study Commission as they are necessary to continue the original study, to assist in the implementation of the original and succeeding Study Commission recommendations, and to plan further activity on the subject of the study.

**Sec. 1.3.** Members and staff of the continued Mental Health Study Commission shall receive compensation and expenses delineated by the original authorization in the 1973 General Assembly Resolution 80. Expenses of the Commission shall be expended by the Department of Human Resources from Budget Code 14460 subhead 1110.

**Sec. 1.4.** In addition to other studies authorized by law, the Mental Health Study Commission shall:

- (1) Exercise oversight of, and make recommendations regarding the implementation of, the Adult Substance Abuse Plan, the Comprehensive Long Range Plan for Adults with Severe and Persistent Mental Illness, the Child Mental Health Plan, the Child and Adolescent Alcohol and Other Drug Abuse Plan, and the Developmental Disabilities Services Plan;
- (2) Exercise oversight of, and make recommendations regarding implementation of the Quality Improvement Initiative endorsed by the Mental Health Study Commission;
- (3) Monitor implementation of Commission recommendations to improve mental health, developmental disabilities, and substance abuse services to criminal justice offenders;

- (4) Exercise oversight of, and make recommendations regarding the implementation of the Pioneer Funding System and the funding initiatives to maximize the use of federal and private dollars to support mental health, developmental disabilities, and substance abuse services;
- (5) Identify and recommend effective model programs for implementation in each of the Mental Health Study Commission Plans;
- (6) Develop a business initiative to increase awareness about the crisis in the mental health system and to build partnerships for creating an effective response; and
- (7) Review major initiatives for children for integration with the Child Mental Health Plan.

Sec. 1.5. The Mental Health Committee, created by the Legislative Research Commission in 1993, is abolished.

## PART II.-----PUBLIC HEALTH STUDY COMMISSION

(S.B. 69 - Cooper)

Sec. 2.1. Chapter 120 of the General Statutes is amended by adding the following new Article to read:

### "ARTICLE 22.

#### "The Public Health Study Commission.

##### "§ 120-195. Commission created; purpose.

There is established the Public Health Study Commission. The Commission shall examine the public health system to determine its effectiveness and efficiency in assuring the delivery of public health services to the citizens of North Carolina.

##### "§ 120-196. Commission duties.

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:

- (1) Determine whether the public health services currently available in each county or district health department conform to the mission and essential services established under G.S. 130A-1.1;
- (2) Study the workforce needs of each county or district health department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in county and district health departments;
- (3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;
- (4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities; and



- (5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its purpose.

"§ 120-197. Commission membership; vacancies; terms.

(a) The Commission shall consist of 17 members, one of whom shall be the State Health Director. The Speaker of the House of Representatives shall appoint seven members, two of whom shall be selected from among the following: the UNC School of Public Health, the North Carolina Primary Care Association, the North Carolina Home Care Association, the North Carolina Pediatric Society, and the North Carolina Citizens for Public Health. Five of the Speaker's appointees shall be persons who are members of the House of Representatives at the time of their appointment, one of the five being the Representative who chairs the House standing committee related to health matters. The President Pro Tempore of the Senate shall appoint seven members, two of whom shall be selected from among the following: the North Carolina Health Directors' Association, the North Carolina Public Health Association, the Association of Public Health Nurses, the North Carolina Environmental Health Supervisors' Association, and the North Carolina Association of Public Health Educators. Five of the President Pro Tempore's appointees shall be persons who are members of the Senate at the time of their appointment, one of the five being the Senator who chairs the Senate standing committee related to health matters. The Governor shall appoint one member from either the North Carolina Medical Society or the North Carolina Hospital Association. The Lieutenant Governor shall appoint one member from either the North Carolina Association of County Commissioners or the Association of North Carolina Boards of Health.

(b) Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section. All initial appointments shall be made within one calendar month from the effective date of this Article.

(c) Legislative members appointed by the Speaker and the President Pro Tempore shall serve two-year terms. The public members initially appointed by the Speaker and the President Pro Tempore shall each serve a three-year term. The members initially appointed by the Governor and the Lieutenant Governor shall each serve a one-year term. Thereafter, the terms of all Commission members shall be for two years.

"§ 120-198. Commission meetings.

The Commission shall have its first meeting not later than 60 days after the sine die adjournment of the 1993 General Assembly at the call of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Commission to serve as cochair. The Commission shall meet upon the call of the cochairs.

"§ 120-199. Commission reimbursement.

The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

"§ 120-200. Commission subcommittees; non-Commission membership.

The Commission cochairmen may establish subcommittees for the purpose of making special studies pursuant to its duties, and may appoint non-Commission members to serve on each subcommittee as resource persons. Resource persons shall be voting members of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6.

"§ 120-201. Commission authority.

The Commission may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The Commission also may call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena records and documents, provided that any patient record shall have patient identifying information removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairmen of the Commission. Any cost of providing information to the Commission not covered by G.S. 120-19.3 may be reimbursed by the Commission from funds appropriated to it for its continuing study.

"§ 120-202. Commission reports.

The Commission shall report to the General Assembly, the Governor, and the Lieutenant Governor the results of its study and recommendations. The Commission shall submit its written report not later than 30 days after the convening of each biennial session of the General Assembly.

"§ 120-203. Commission staff; meeting place.

The Commission may contract for clerical and professional staff or for any other services it may require in the course of its ongoing study.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building."

**Sec. 2.2.** The Public Health Committee, created by the Legislative Research Commission in 1993, is abolished.

### PART III.-----ELECTION LAWS REVIEW COMMISSION

(S.B. 21 - Lee, Basnight)

**Sec. 3.1.** (a) There is created an Election Laws Review Commission to be composed of 18 members appointed as follows:

- (1) The President Pro Tempore of the Senate shall appoint six members;
- (2) The Speaker of the House of Representatives shall appoint six members; and
- (3) The Governor shall appoint six members.

As used in this Part and unless otherwise clearly indicated, "Commission" shall refer to the Election Laws Review Commission.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission

from their appointees. Either cochair may call the first meeting of the Commission.

(c) Members shall serve until the termination of the Commission or, in case of a State legislator member, until the member either does not file for reelection to the General Assembly or is not reelected, whichever occurs first. Vacancies shall be filled in the same manner as the original appointments were made.

**Sec. 3.2.** (a) The Election Laws Review Commission shall study thoroughly:

- (1) The election laws, policies, and procedures of the State, specifically to include those relating to campaign finance regulation, the appropriateness of their sanctions, and the appropriate handling and disposition of campaign contributions;
  - (2) The administration of those laws, policies, and procedures at the State and local levels and the responsibilities of those administering these laws; and
  - (3) Federal and State case rulings impinging on these laws, policies, and practices.
- (b) The Commission shall recommend changes to the law that will:
- (1) Clarify the present law by removing inconsistencies and outdated provisions, including those of dubious constitutionality;
  - (2) Incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections and its Executive Secretary-Director;
  - (3) Conform the law to State and federal case law and to any requirements of federal statutory law and regulation;
  - (4) Ensure the efficient and effective administration of elections in this State;
  - (5) Continue the impartial, professional administration of elections, which the citizens of the State expect and demand; and
  - (6) Recodify the election laws, as necessary, to produce a comprehensive current statement of law and practice of elections in North Carolina.

**Sec. 3.3.** With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Election Laws Review Commission. Clerical staff shall be furnished to the Commission through the Offices of the House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Election Laws Review Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

**Sec. 3.4.** The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 1995 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of

Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

**Sec. 3.5.** Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- (3) All other Commission members, at the rate established in G.S. 138-5.

**Sec. 3.6.** The State Board of Elections and its Executive Secretary-Director, local boards of election, and all other State departments and agencies, and local governments and their subdivisions shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in their possession or available to them.

**Sec. 3.7.** The Election Laws Review Committee, created by the Legislative Research Commission in 1993, is abolished.

#### PART IV.-----INSURANCE FRAUD

(H.B. 1745 - Griffin)

**Sec. 4.1.** The Legislative Research Commission may study ways to improve the detection of insurance fraud and eliminate the occurrence of fraud through the development of fraud prevention programs, including the creation of a Division of Insurance Fraud Prevention within the Department of Insurance. The Commission may also study ways to require the return of fraudulently obtained insurance benefits and to reduce the amount of premium dollars used to pay fraudulent claims.

**Sec. 4.2.** The Legislative Research Commission may make a report to the 1995 General Assembly.

#### PART V.-----GOVERNOR'S COMMISSION ON THE REDUCTION OF INFANT MORTALITY REPORTING DATE EXTENSION

**Sec. 5.1.** Section 284(a) of Chapter 321 of the 1993 Session Laws reads as rewritten:

"Sec. 284. (a) Of the funds appropriated in this act from the General Fund to the Department of Environment, Health, and Natural Resources for the Governor's Commission on the Reduction of Infant Mortality, the sum of fifty thousand dollars (\$50,000) for the 1993-94 fiscal year shall be used to contract with outside evaluators to determine the extent to which the public and private health, social services and mental health, developmental disabilities, and substance abuse services systems in each county meet the health needs of pregnant women and infants up to age one, and of children ages one to five. The study shall include, but not be limited to: an examination of the percentage of pregnant women in each county that receive early and continuous prenatal care; the extent to which eligible pregnant women, infants, and children are receiving nutritional supplements, case management and other necessary health, social, mental health, and other support services; and the extent to which children are

receiving age-appropriate immunizations. The study shall determine what barriers, if any, exist in each county which prevent pregnant women, infants, and children under the age of five from receiving timely and necessary health services. The Governor's Commission on the Reduction of Infant Mortality shall report its findings to the General Assembly on or before ~~May 15,~~ October 1, 1994."

#### PART VI.-----HEALTH PLANNING COMMISSION REPORT EXTENSION

Sec. 6.1. Section 2.1(b) of Chapter 529 of the 1993 Session Laws (1993 Session) reads as rewritten:

"(b) ~~The Governor~~ The Governor, acting upon recommendation of the Health Planning Commission, shall present to the General Assembly no later than ~~April 1, 1994,~~ February 1, 1995, a plan for consolidating all of the State health functions into one State Department of Health. The plan shall be based upon and shall address the principles and elements outlined in subsections (c) and (d) of this section."

#### PART VII.-----APPROPRIATION FOR STUDIES

Sec. 7.1. From the appropriations to the General Assembly for studies, the Legislative Services Commission may allocate funds to conduct the studies authorized by Parts II and III of this act.

#### PART VIII.-----EFFECTIVE DATE

Sec. 8.1. This act is effective upon ratification. Part II of this act is repealed on June 30, 1995.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 733

### CHAPTER 772

#### AN ACT TO ESTABLISH A PARKS AND RECREATION TRUST FUND.

*The General Assembly of North Carolina enacts:*

Section 1. Article 2C of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-44.15. Parks and Recreation Trust Fund.

(a) There is established a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund shall be a nonreverting special revenue fund consisting of gifts and grants to the Trust Fund and other monies appropriated to it by the General Assembly.

It is the intent of the General Assembly to dedicate an amount equal to seventy-five percent (75%) of the State's share of the deed stamp tax levied pursuant to G.S. 105-228.30 to the Parks and Recreation Trust Fund and an additional amount equal to ten percent (10%) of the State's share of the deed stamp tax to the Natural Heritage Trust Fund.

(b) Beginning July 1, 1995, funds in the Trust Fund are annually appropriated to the Department and, unless otherwise specified by the



General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

- (1) Seventy-five percent (75%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition.
- (2) Twenty percent (20%) to provide matching funds to local governmental units on a dollar-for-dollar basis for local park and recreation purposes. These funds shall be allocated by the Secretary based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.
- (3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

(c) The Department shall report on an annual basis to the Joint Legislative Commission on Governmental Operations, the appropriations committees of the House of Representatives and the Senate, and the Fiscal Research Division on allocations from the Trust Fund."

**Sec. 2.** G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county shall remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county shall credit one-half of the proceeds to the county's general fund and shall remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, to the Department of Revenue on a quarterly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue shall credit fifteen percent (15%) to the ~~Recreation and~~ Natural Heritage Trust Fund established under G.S. 113-77.7 and the remainder to the General Fund."

**Sec. 3.** Article 5A of Chapter 113 of the General Statutes reads as rewritten:

#### "ARTICLE 5A.

#### ~~"Recreation and~~ Natural Heritage Trust Program.

#### "§ 113-77.6. *Definitions.*

As used in this Article:

- (1) 'Appraised value' means the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the uses to which the property is adapted and for which it is capable of being used.
- (2) 'Fund' means the ~~Recreation and~~ Natural Heritage Trust Fund created pursuant to this Article.
- (3) 'Land' and 'lands' mean real property and any interest in, easement in, or restriction on real ~~property;~~ property.
- (4) 'Secretary' means the Secretary of Environment, Health, and Natural ~~Resources;~~ Resources.

- (5) 'Trustees' means the trustees of the ~~Recreation and~~ Natural Heritage Trust Fund.

*"§ 113-77.7. ~~Recreation and~~ Natural Heritage Trust Fund.*

(a) There is established a ~~Recreation and~~ Natural Heritage Trust Fund in the State Treasurer's office that shall be used to finance the ~~Recreation and~~ Natural Heritage Trust Program authorized by this Article.

(b) The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chairman of the Board of Trustees.

(c) When the State acquires land pursuant to this Article, the Chairman of the Board of Trustees shall direct a request to the State Treasurer to set aside an amount from the Fund not to exceed twenty percent (20%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired, to be placed in a special stewardship account in the Fund. The special stewardship account shall be a nonlapsing account, and income derived from investment of the account shall be credited to the account. The special stewardship account shall be used for the management of land acquired pursuant to this Article, as directed by the Trustees, so long as such land remains in the Trust.

*"§ 113-77.8. ~~Recreation and~~ Natural Heritage Trust Fund Board of Trustees.*

(a) Expenditures from the Fund shall be authorized by a nine-member Board of Trustees. Three members shall be appointed by the Governor, three by the Lieutenant Governor, and three by the Speaker of the House of Representatives. Persons appointed shall be knowledgeable in the acquisition and management of natural areas. Each appointing officer shall designate one of his initial appointments to serve a two-year term, one to serve a four-year term, and one to serve a six-year term. Thereafter, all appointments shall be for six years, subject to reappointment. All initial appointments shall be made on or before January 1, 1988. The Governor shall appoint one Trustee to serve as Chairman of the Board. The Secretary shall provide the Trustees with staff support and meeting facilities using expenditures from the Fund. The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b) The Trustees shall meet at least once each year and may hold special meetings at the call of the Chairman or a majority of the members.

(c) The Trustees shall receive the per diem allowed for other members of boards and commissions of the State as fixed in the Biennial Appropriations Act, and, in addition, the Trustees shall receive subsistence and travel expenses as fixed by statute for such purposes. Travel and subsistence expenses shall be allowed while going to or from any place of meeting or when on official business. Per diem payments shall include necessary time spent in traveling to and from their places of residence to any meeting place or while traveling on official business. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

"§ 113-77.9. *Acquisition of lands from the ~~Recreation and~~ Natural Heritage Trust Fund.*

(a) From time to time, but at least once each year, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, and the Commissioner of Agriculture shall propose to the Trustees lands to be acquired from the Fund. For each tract or interest proposed, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, and the Commissioner of Agriculture shall provide the Trustees with the following information:

- (1) The value of the land for recreation, forestry, fish and wildlife habitat, and wilderness purposes, and its consistency with the plan developed pursuant to the State Parks Act, the State's comprehensive plan for outdoor recreation, parks, natural areas development, and wildlife management goals and objectives;
  - (2) Any rare or endangered species on or near the land;
  - (3) Whether the land contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon;
  - (4) Whether the land contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature;
  - (5) The extent to which the land represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural areas;
  - (6) Other sources of funds that may be available to assist in acquiring the land;
  - (7) The State department or division that will be responsible for managing the land;
  - (8) What assurances exist that the land will not be used for purposes other than those for which it is being acquired; and
  - (9) Whether the site or structure is of such historical significance as to be essential to the development of a balanced State program of historic properties.
- (b) The Trustees may authorize expenditures from the Fund to acquire:
- (1) Land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes.
  - (2) Land as additions to the system of parks, State trails, aesthetic forests, fish and wildlife management areas, wild and scenic rivers, and natural areas for the beneficial use and enjoyment of the public.
  - (3) Subject to the limitations of subsection (b1), land that contributes to the development of a balanced State program of historic properties.

The Trustees may designate managers or managing agencies of the lands so acquired to receive grants from the Fund's stewardship account. In authorizing expenditures from the Fund to acquire land pursuant to this

Article, the first priority shall be the protection of land with outstanding natural or cultural heritage values. Land with outstanding natural heritage values is land that is identified by the North Carolina Natural Heritage Program as having State or national significance. Land with outstanding cultural heritage values is land that is identified, inventoried, or evaluated by the Department of Cultural Resources. The Trustees shall be guided by any priorities established by the Secretary, the Chairman of the Wildlife Resources Commission, and the Commissioner of Agriculture in their proposals made pursuant to subsection (a), above.

(b1) The Trustees may authorize expenditure of up to twenty-five percent (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the preceding fiscal year to acquire land under subdivision (3) of subsection (b). No other funds in the Fund may be used for expenditures to acquire land under subdivision (3) of subsection (b).

(c) The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas by the Secretary's Natural Heritage Program conducted pursuant to Chapter 113A, Article 9A, of the General Statutes.

(d) The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. State agencies with management responsibilities for lands acquired pursuant to this Article may enter into management agreements in the form of leases with counties, cities, and towns to aid in managing the lands, and such lease agreements shall be executed by the Department of Administration pursuant to G.S. 143-341.

(d1) In any county in which real property was purchased pursuant to subsection (d) of this section as additions to the fish and wildlife management areas and where less than twenty-five percent (25%) of the land area is privately owned at the time of purchase, that county and any other local taxing unit shall be annually reimbursed, for a period of 20 years, from funds available to the North Carolina Wildlife Resources Commission in an amount equal to the amount of ad valorem taxes that would have been paid to the taxing unit if the property had remained subject to taxation.

(e) The Secretary shall maintain and annually revise a list of acquisitions made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount paid from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee and to each House of the General Assembly after each revision.

(f) No provision of this Article shall be construed to eliminate hunting and fishing, as regulated by the laws of the State of North Carolina, upon properties purchased pursuant to this Article."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

S.B. 1724

## CHAPTER 773

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES  
UPON THE RECOMMENDATION OF THE PRESIDENT AND  
PRESIDENT PRO TEMPORE OF THE SENATE AND TO MAKE  
TECHNICAL CHANGES CONCERNING APPOINTMENTS.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President of the Senate or the President Pro Tempore of the Senate; and

Whereas, the President of the Senate and the President Pro Tempore of the Senate have made recommendations; Now, therefore,

*The General Assembly of North Carolina enacts:*

PART 1. PRESIDENT OF THE SENATE

Section 1. Susan B. Roderick of Buncombe County is appointed to the Board of Directors of the Western North Carolina Arboretum for a term expiring June 30, 1998.

Sec. 2. Debi Harrill of Cleveland County and Diana J. Wilson of Chowan County are appointed to the Child-Day Care Commission for a term expiring June 30, 1996. Debi Harrill is a categorical appointment for a person affiliated with a for-profit child day care center. Diana J. Wilson is a categorical appointment for a person affiliated with a nonprofit center or home.

Sec. 3. Kim Dove of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring June 30, 1997. This is a categorical appointment for a licensed dietitian/nutritionist.

Sec. 4. Regina L. Hopkins of Lenoir County is appointed to the Low-Level Radioactive Waste Management Authority for a term ending June 30, 1998.

Sec. 5. James Vann of Person County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term ending June 30, 1996.

Sec. 6. Kathy Barger of Pitt County is appointed to the North Carolina Medical Database Commission for a term ending June 30, 1997. This is a categorical appointment for a hospital administrator.

Sec. 7. Ken Haigler of Pitt County is appointed to the North Carolina State Ports Authority for a term ending June 30, 1996.

Sec. 8. Sherman Guillyard of Bladen County is appointed to the Private Protective Services Board for a term ending June 30, 1997.

Sec. 9. Teresa Smallwood of Bertie County and Vernice B. Howard of Hertford County are appointed to the Rules Review Commission for terms ending June 30, 1996.

Sec. 10. John Talbot Johnson of Moore County is appointed to the State Building Commission for a term ending June 30, 1997.

Sec. 11. Wayne Pollock of Durham County is appointed to the State Board of Therapeutic Recreation Certification Board for a term ending June 30, 1995. This is a categorical appointment for a recreation therapist.



**Sec. 12.** Lula Herring of Pender County is appointed to the State Board of Therapeutic Recreation Certification Board for a term ending June 30, 1997. This is a categorical appointment for a public member to the Board.

## PART 2. PRESIDENT PRO TEMPORE OF THE SENATE

**Sec. 13.** Senators Beverly Perdue of Craven County and J. Richard Conder of Richmond County are appointed to the North Carolina Travel and Tourism Board for terms beginning on January 1, 1995, and expiring on December 31, 1996. Ward Barnett of Dare County and Barry Hipps of Swain County are appointed to the North Carolina Travel and Tourism Board for terms beginning on January 1, 1995, and expiring on December 31, 1996.

**Sec. 14.** Judy Seamon of Carteret County and Barbara Morris of Harnett County are appointed to the Board of Directors of the North Carolina Center for Nursing for terms expiring June 30, 1997.

**Sec. 14.1.** Jim Eaton of Davie County, Thomas Mehder of Mecklenburg County, Craig W. Morehead of Wake County, Bill Weatherspoon of Wake County, and James T. Fain of Wake County are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring June 30, 1995.

**Sec. 14.2.** Lee Fowlkes of Caswell County, Robert Stipe of Orange County, and Frank Block of New Hanover County are appointed to the Capitol Preservation Commission for terms expiring June 30, 1996.

**Sec. 14.3.** Dr. H. A. Phillips of Duplin County and Russell M. Hull, Jr. of Pasquotank County are appointed to the Wildlife Resources Commission for terms expiring April 24, 1995.

**Sec. 14.4.** Dr. Fred Glaser of Pitt County is appointed to the North Carolina Substance Abuse Professionals Certification Board for a term expiring June 30, 1997.

**Sec. 15.** Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification.

## PART 3. APPOINTMENT CORRECTIONS

**Sec. 15.1.** G.S. 143B-434(b) reads as rewritten:

"(b) Membership. -- The Economic Development Board shall consist of 36 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the Lieutenant Governor, President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board, provided that effective with the terms beginning July 1, 1997, one of those appointees shall be a representative of a nonprofit organization involved in economic development and two of those appointees shall be county economic

development representatives. The Governor shall designate a chair and a vice-chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and 138-6, as the case may be. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1."

**Sec. 15.2.** (a) G.S. 90-113.32(b), as enacted by Chapter 685 of the Session Laws of 1993, reads as rewritten:

"(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professionals Certification Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section."

(b) G.S. 90-113.32(c)(5), as enacted by Chapter 685 of the Session Laws of 1993, reads as rewritten:

"(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the

General Assembly upon the recommendation of the President Pro Tempore of the Senate. Senate in accordance with G.S. 120-121."

Sec. 16. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

H.B. 291

## CHAPTER 774

### AN ACT APPOINTING PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND OTHERWISE RELATING TO APPOINTMENTS TO CERTAIN BOARDS.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** W. Ray McLester of Mecklenburg County is appointed to the Alarm Systems Licensing Board for a term to expire on June 30, 1997. This is the categorical appointment for a person licensed under Chapter 74D of the General Statutes.

**Sec. 2.** Morris L. McGough of Buncombe County is appointed to the Board of Directors of the North Carolina Arboretum for a term to expire on June 30, 1998, pursuant to G.S. 116-243.

**Sec. 3.** Judy Ward of Alamance County is appointed to the North Carolina Manufactured Housing Board for a term to expire on June 30, 1997. This is the categorical appointment for a representative of the banking and finance business, pursuant to G.S. 143-143.10.

Larry T. Gilmore of Guilford County is appointed to the North Carolina Manufactured Housing Board for a term to expire on June 30, 1997. This is the categorical appointment of a representative of the insurance industry, pursuant to G.S. 143-143.10.

**Sec. 4.** Jack K. Colby of Guilford County is appointed to the State Building Commission for a term to expire on June 30, 1997. This is the categorical appointment for a manager of a physical plant operation, pursuant to G.S. 143-135.25.

**Sec. 5.** Joanne Byrd and Christopher E. McClure of Wake County are appointed to the Child Day-Care Commission for terms expiring on June 30, 1996. These are the categorical appointments for public members, pursuant to G.S. 143B-168.4.

**Sec. 6.** Rebecca S. Freeman of Durham County is appointed to the North Carolina Board of Dietetics/Nutrition for a term to expire on June 30, 1997. This is the categorical appointment for a professional whose primary practice is community or public health dietetics/nutrition, pursuant to G.S. 90-354.

**Sec. 7.** Cathy Chapman of Forsyth County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1997. This is the categorical appointment for a nurse, pursuant to G.S. 90-171.71.

**Sec. 8.** Roy A. Stevens of Carteret County is appointed to the North Carolina State Ports Authority for a term to expire on June 30, 1996, pursuant to G.S. 143B-452.

**Sec. 9.** Mack Donaldson of Guilford County is appointed to the Private Protective Services Board for a term to expire on June 30, 1997. This is the categorical appointment for a person licensed under Chapter 74C of the General Statutes.

**Sec. 10.** Jennie Hayman and Marvealave D. Francis of Wake County are appointed to the Rules Review Commission for terms expiring on June 30, 1996, pursuant to G.S. 143B-30.1.

**Sec. 11.** Ronald L. Smith of Carteret County and Thomas K. Jenkins of Macon County are appointed to the North Carolina Travel and Tourism Board for terms to begin on January 1, 1995, and expire on December 31, 1996. These are the categorical appointments for members of the House of Representatives, pursuant to G.S. 143B-434.1.

Sue Wilmoth of Watauga County is appointed to the North Carolina Travel and Tourism Board for a term to begin on January 1, 1995, and expire on December 31, 1996. This is the categorical appointment of a public member interested in matters relating to travel and tourism, pursuant to G.S. 143B-434.1.

Carmen Crockett of Wake County is appointed to the North Carolina Travel and Tourism Board for a term to begin on January 1, 1995, and expire on December 31, 1996. This is the categorical appointment of a person associated with tourism attractions in North Carolina, pursuant to G.S. 143B-434.1.

**Sec. 12.** Benton F. "Sonny" Clifton, Jr., of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire on June 30, 1996, pursuant to G.S. 135-39.

**Sec. 13.** Ches Gwin of Mecklenburg County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1996. This is the categorical appointment for a person who is a representative of an employer of 200 or more employees in a business that is unrelated to a health care provider or third-party payor, pursuant to G.S. 131E-211.

Dr. James P. Green, Sr., of Vance County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1996. This is the categorical appointment for a physician, pursuant to G.S. 131E-211.

O. Louis Gentry of Guilford County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1996. This is the categorical appointment for a representative of a commercial insurance company providing health insurance in North Carolina, pursuant to G.S. 131E-211.

**Sec. 14.** Dewey Brown of Wake County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1994, and expire on August 31, 1996. This is the categorical appointment for a representative of a nonprofit housing development corporation, pursuant to G.S. 122E-4(b).

Reverend William D. Crowder of Wake County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1994, and expire on August 31, 1996. This is the categorical appointment for a resident of low-income housing, pursuant to G.S. 122E-4(b).

Kenneth Freeman of Robeson County is appointed to the North Carolina Housing Partnership for a term to begin on September 1, 1994, and expire on August 31, 1996. This is the categorical appointment for a representative of a real estate lending industry, pursuant to G.S. 122E-4(b).

Abdul Rasheed of Vance County and Michael D. Calhoun of Durham County are appointed to the North Carolina Housing Partnership for terms beginning on September 1, 1994, and expiring on August 31, 1996. These are the categorical appointments for at-large members, pursuant to G.S. 122E-4(b).

**Sec. 15.** James E. Norris of Columbus County is appointed to the Southeastern North Carolina Farmers' Market Commission for a term to expire on June 30, 1996, pursuant to G.S. 106-727.

**Sec. 16.** James B. Black, Jr., of Mecklenburg County is appointed to the North Carolina Wildlife Resources Commission for a term to expire on April 24, 1995, pursuant to G.S. 113-241.

**Sec. 17.** William A. Creech of Wake County and Daryl Garner of Carteret County are appointed to the Capitol Preservation Commission for terms expiring on June 30, 1996, pursuant to G.S. 143B-80.9.

Phillip Freelon of Wake County is appointed to the Capitol Preservation Commission for a term to expire on June 30, 1998. This is the categorical appointment for a person with experience or background in the restoration of monumental buildings, historic restoration, or fine arts conservation, pursuant to G.S. 143B-80.9.

**Sec. 18.** Members of the Commission for a Competitive North Carolina, who are also members of the General Assembly, shall be reimbursed for subsistence and travel expenses at the rates set forth in G.S. 120-3.1 for the General Assembly members.

**Sec. 19.** Section 19 of Chapter 500 of the 1993 Session Laws reads as rewritten:

"Sec. 19. This act becomes effective October 1, 1993, provided that Section 3 of this act does not affect the term of office of any member serving on that ~~date~~, date, and that the total membership of the North Carolina Veterinary Medical Board, as set forth in Section 3, is temporarily increased to eight during the remainder of the term of office of the member appointed by the Speaker of the House of Representatives."

**Sec. 20.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.



AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT, LOCAL SCHOOL BOARDS, AND COMMUNITY COLLEGES TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS IN ORDER TO FINANCE ENERGY CONSERVATION MEASURES IN LOCAL PUBLIC FACILITIES.

*The General Assembly of North Carolina enacts:*

Section 1. The heading to Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Energy Policy For State Government, Conservation in Public Facilities."

Sec. 1.1. G.S. 143-64.10 through 143-64.16 is designated as Part 1 of Article 3B of Chapter 143 of the General Statutes with the heading "Energy Policy and Life-Cycle Cost Analysis."

Sec. 2. G.S. 143-64.16 reads as rewritten:

"§ 143-64.16. Application of ~~Article~~ Part.

The provisions of this ~~Article~~ Part shall not apply to municipalities or counties, nor to any agency or department of any municipality or county; provided, however, this ~~Article~~ Part shall apply to any board of a community college. Community college is defined in G.S. 115D-2(2)."

Sec. 3. Article 3B of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 2. Guaranteed Energy Savings Contracts for Local Governmental Units.

"§ 143-64.17. Definitions.

As used in this Part:

- (1) 'Energy conservation measure' means a facility alteration or training related to the operation of the facility that reduces energy consumption or operating costs and includes:
  - a. Insulation of the building structure and systems within the building;
  - b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption;
  - c. Automatic energy control systems;
  - d. Heating, ventilating, or air-conditioning system modifications or replacements;
  - e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made;
  - f. Energy recovery systems;

- g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or
  - h. Other energy conservation measures that provide long-term operating cost reductions or significantly reduce energy consumed.
- (2) 'Energy savings' means a measured reduction in fuel, energy, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel, energy, or operating costs developed by the local governmental unit.
  - (3) 'Guaranteed energy savings contract' means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs. A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local governmental unit uses its own forces for maintenance or if the local governmental unit can purchase maintenance services at a lower cost from another provider or contractor.
  - (4) 'Local governmental unit' means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.
  - (5) 'Qualified provider' means a person or business experienced in the design, implementation, and installation of energy conservation measures.
  - (6) 'Request for proposals' means a negotiated procurement initiated by a local governmental unit by way of a published notice that includes the following:
    - a. The name and address of the local governmental unit.
    - b. The name, address, title, and telephone number of a contact person in the local governmental unit.
    - c. Notice indicating that the local governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
    - d. The date, time, and place where proposals must be received.
    - e. The evaluation criteria for assessing the proposals.
    - f. A statement reserving the right of the local governmental unit to reject any or all the proposals.
    - g. Any other stipulations and clarifications the local governmental unit may require.

"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

(a) Before entering into a guaranteed energy savings contract, a local governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible. No guaranteed energy savings contract shall be awarded by any governing body unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governing body of the local governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governing body may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy savings.

(c) Proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

- (1) The information required in subsection (b) of this section; and
- (2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(d) The local governmental unit shall select the qualified provider that it determines to best meet the needs of the local governmental unit by evaluating the following:

- (1) Prices offered;
- (2) Proposed costs of construction, financing, maintenance, and training;
- (3) Quality of the products proposed;
- (4) Amount of energy savings;
- (5) General reputation and performance capabilities of the qualified providers;
- (6) Substantial conformity with the specifications and other conditions set forth in the request for proposals;
- (7) Time specified in the proposals for the performance of the contract; and
- (8) Any other factors the local governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of local governmental units as set forth in Article 3D of this Chapter.

"§ 143-64.17B. Guaranteed energy savings contracts.

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

- (1) The term of the contract does not exceed eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.
- (2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
- (3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' also includes any obligations on termination of the contract before its expiration.

"§ 143-64.17C. Installment and lease-purchase contracts.

Units of local government may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease-purchase contracts in accordance with G.S. 160A-20 and G.S. 160A-19. Notwithstanding the provisions of G.S. 160A-20(h), a community college or board of education may enter into an installment contract or a lease-purchase contract for the purpose of financing energy conservation measures acquired pursuant to this Part. A community college or board of education that finances energy conservation measures pursuant to this section, either by an installment contract or a lease-purchase contract, is subject to the conditions and restrictions set out in G.S. 160A-20(a) through (g).

"§ 143-64.17D. Contract continuance.

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a debt, liability, or obligation of any local governmental unit or a pledge of the faith and credit of any unit of local government.



"§ 143-64.17E. Payments under contract.

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract."

Sec. 4. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are governed solely by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128(c)."

Sec. 5. G.S. 115C-47 is amended by adding a new subdivision to read:

"(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. -- Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes."

Sec. 6. G.S. 115C-521(c) reads as rewritten:

"(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. Boards of education shall also not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441 (c1). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor: Provided, that this subsection shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals



for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable. Local school boards may enter into guaranteed energy savings contracts for the evaluation, recommendation, or implementation of energy conservation measures in school facilities pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under any rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in whole or in part, from the loan or grant funds, shall have been approved by a designated agent of the State Board of Education. Upon approval by the State Board of Education, the State Treasurer may pay the balance of the loan or grant to the treasurer of the local school administrative unit for which the loan or grant was made."

Sec. 7. G.S. 115D-20 is amended by adding a new subdivision to read:

"(10) To enter into guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes."

Sec. 8. Chapter 133 of the General Statutes is amended by adding a new section to read:

"§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes."

Sec. 9. A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission. The Commission shall compile the information and report it biennially to the Joint Legislative Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State Construction, shall evaluate whether expected savings have in fact been realized.

Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 TO MAKE IT MORE EFFECTIVE AND TO AMEND THE DEFINITION OF "PUBLIC WATER SYSTEM" FOR PURPOSES OF THE NORTH CAROLINA DRINKING WATER ACT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 113A-52 reads as rewritten:

"§ 113A-52. *Definitions.*

As used in this Article, unless the context otherwise requires:

(1) Repealed by Session Laws 1973, c. 1417, s. 1.

(1a) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'affiliate' as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(2) 'Commission' means the North Carolina Sedimentation Control Commission.

(3) 'Department' means the North Carolina Department of Environment, Health, and Natural Resources.

(4) 'District' means any Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

(5) 'Erosion' means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

(6) 'Land-disturbing activity' means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This Article shall not apply to the following land-disturbing activities:

a. ~~Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals;~~

b. ~~Those undertaken on forestland for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the Department; and~~

c. ~~Activities undertaken by persons as defined in G.S. 113A-52(8) who are otherwise regulated by the provisions of G.S. 74-46 through G.S. 74-68, the Mining Act of 1971.~~

- (7) 'Local government' means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.
- (7a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'parent' as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (8) 'Person' means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (9) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.
- (10) 'Sediment' means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (10a) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'subsidiary' as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- ~~(10a)~~(10b) 'Tract' means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (11) 'Working days' means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken."

Sec. 2. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-52.01. Applicability of this Article.

This Article shall not apply to the following land-disturbing activities:

- (1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
  - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  - b. Dairy animals and dairy products.
  - c. Poultry and poultry products.
  - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
  - e. Bees and apiary products.
  - f. Fur producing animals.
- (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.
- (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

- (4) For the duration of an emergency, activities essential to protect human life."

Sec. 3. G.S. 113A-54(d) reads as rewritten:

"(d) In implementing the erosion and sedimentation control program, the Commission shall:

- (1) Assist and encourage local governments in developing erosion and sediment control programs ~~and as part of such assistance to and, as a part of this assistance, the Commission shall develop a model local erosion control ordinance, and ordinance. The Commission shall approve, approve as modified, or disapprove local plans~~ programs submitted to it pursuant to G.S. 113A-60; 113A-60.
- (2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their ~~jurisdictions, and to jurisdictions. The Commission shall approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time shall review such these programs for compliance with regulations issued rules adopted by the Commission and for adequate enforcement; enforcement.~~
- (3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of this Article and erosion control regulations, rules, ordinances, regulations, and plans; plans.
- (4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities."

Sec. 4. G.S. 113A-54.1 reads as rewritten:

"§ 113A-54.1. *Approval of erosion control plans.*

(a) A draft erosion control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. The Commission ~~must either approve or shall approve, approve with modifications, or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. Failure to approve approve, approve with modifications, or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion control plans approved under this Article.~~

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require ~~such revisions~~ any revision of the plan ~~as are that~~ that is necessary to comply with this Article. Failure to ~~approve~~ approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an ~~applicant, or any parent or subsidiary corporation if the applicant is a corporation;~~ applicant or a parent, subsidiary, or other affiliate of the applicant;

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article ~~which is due and for which no appeal is pending;~~ by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

Sec. 5. G.S. 113A-54.2(b) reads as rewritten:

"(b) The Sedimentation Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Article."

Sec. 6. G.S. 113A-55 reads as rewritten:

"§ 113A-55. *Authority of the Secretary.*

The sedimentation control program developed by the Commission shall be administered by the Secretary under the direction of the Commission. To this end the Secretary ~~is authorized and directed to employ, with the approval of the Commission,~~ shall employ the necessary clerical, technical, and administrative personnel, and ~~to~~ assign tasks to the various divisions of the Department for the purpose of implementing this Article. The Secretary ~~is authorized to may~~ bring enforcement actions pursuant to G.S. 113A-64 and 113A-65. The Secretary shall make final agency decisions in contested cases that arise from civil penalty assessments pursuant to G.S. 113A-64."

Sec. 7. G.S. 113A-60 reads as rewritten:

"§ 113A-60. *Local erosion control programs.*



(a) Any local government may submit to the Commission for its approval an erosion and sediment control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances, rules, ordinances and regulations necessary to establish and enforce such erosion and sediment control programs, and they programs. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into such any agreements as that are necessary for the proper administration and enforcement of such the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of ~~the model local erosion control ordinance developed in accordance with G.S. 113A-54(d)(1),~~ this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sediment control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program."

Sec. 8. G.S. 113A-61(a) reads as rewritten:

"(a) ~~Each local government's erosion and sediment control program shall require that for~~ For those land-disturbing activities requiring for which prior approval of an erosion control plan, such plan shall be submitted ~~plan is required,~~ the Commission may require that a local government that administers an erosion and sediment control program approved under G.S. 113A-60 require the applicant to submit a copy of the erosion control plan to the appropriate soil and water conservation district or districts at the same time it is submitted ~~the applicant submits the erosion control plan to the local government for approval. The soil and water conservation district or districts, within 20 days after receipt of the proposed plan, or within such additional time as may be prescribed by the local government, districts shall review the plan and submit its any comments and recommendations to the local government.~~ government within 20 days after the soil and water conservation district received the erosion control plan or within any shorter period of time as may be agreed upon by the soil and water conservation district and the local government. Failure of ~~the a~~ a soil and water conservation district to submit ~~its~~ comments and recommendations within 20

days or within ~~the prescribed additional~~ agreed upon shorter period of time shall not delay final action on the proposed plan by the local government."

Sec. 9. G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government may disapprove an erosion control plan upon finding that an ~~applicant, or any parent or subsidiary corporation if the applicant is a corporation;~~ applicant or a parent, subsidiary, or other affiliate of the applicant;

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article ~~which is due and for which no appeal is pending;~~ by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Sec. 10. G.S. 113A-61.1 reads as rewritten:

~~"§ 113A-61.1. Periodic inspection~~ Inspection of land-disturbing activity; ~~activity; notice of violation.~~

(a) ~~With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either The Commission or The Commission, a local government, government that administers an erosion and sediment control program approved under G.S. 113A-60, or other approving authority shall provide for periodic inspection of the land-disturbing activity activities to ensure compliance with the approved plan, this Article and to determine whether the measures required in the an erosion control plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. activity. Notice of such this right of inspection shall be included in the certificate of approval for the of each erosion control plan.~~

(b) ~~No person shall willfully resist, delay, or obstruct an authorized representative of the Commission, an authorized representative of a local government, or an employee or an agent of the Department while the representative, employee, or agent is inspecting or attempting to inspect a land-disturbing activity under this section.~~

(c) ~~If the Secretary, a local government that administers an erosion and sediment control program approved under G.S. 113A-60, or other approving authority determines that the person engaged in the land-disturbing activities activity has failed to comply with the plan, this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person by registered mail a notice to comply. The notice person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. shall set forth the~~

~~measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the Any person engaged in the land-disturbing activities who fails to comply within the time specified, he shall be specified deemed in violation of this Article, is subject to the civil and criminal penalties provided in G.S. 113A-64."~~

Sec. 11. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. --

- (1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be is subject to a civil penalty of not more than penalty. The maximum civil penalty for a violation, other than a violation of a stop-work order issued under G.S. 113A-65.1, is five hundred dollars (\$500.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (4) of this subsection and the penalty for violating a stop-work order shall be as provided in subdivision (5) of this subsection. (\$500.00). The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5,000). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation, violation as provided in G.S. 113A-61.1(b). A civil penalty may be assessed from the date the notice of violation is served. Each day of a continuing violation shall constitute a separate violation.
- (2) ~~The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under this subsection and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty. Local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. The Secretary or a local government that administers an erosion and sediment control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the~~

assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. Such A civil actions action must be filed within three years of the date the final agency decision was served on the violator, assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. Any sums recovered shall be used to carry out the purposes and requirements of this Article.

- (3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article.
- ~~(4) Any person who fails to submit an erosion control plan for approval by the Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 shall be subject to a single, noncontinuing civil penalty of not more than one thousand dollars (\$1,000). Any penalty which is recovered pursuant to this subdivision shall be deposited in the General Fund. Any person who is subject to a civil penalty under this subdivision may be subject to additional civil penalties for violation of any other provision of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or a local government.~~
- (5) Any person who violates a stop-work order issued pursuant to G.S. 113A-65.1 shall be subject to a civil penalty of not more than five thousand dollars (\$5,000). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall be a separate violation. Civil penalties collected by the Department or other State agency under this subsection shall be credited to the General Fund as nontax revenue. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

Sec. 12. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-64.1. Restoration of areas affected by failure to comply.



The Secretary or a local government that administers a local erosion and sediment control program approved under G.S. 113A-60 may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Article."

**Sec. 13.** G.S. 113A-65(c) reads as rewritten:

"(c) Abatement, etc., of Violation. -- Upon determination by a court that an alleged violation is occurring or is threatened, ~~it the court shall enter such orders or judgments as are~~ any order or judgment that is necessary to abate the ~~violation~~ violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under subsections (a) or (b) of this section shall not relieve any party to ~~such the~~ proceeding from any civil or criminal penalty prescribed for violations of this Article."

**Sec. 14.** G.S. 130A-313(10) reads as rewritten:

"(10) 'Public water system' means a system for the provision to the public of piped water for human consumption if the system serves 15 or more service connections or which regularly serves 25 or more individuals. ~~Two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons is a public water system.~~ The term includes:

- a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and
- b. Any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.

A public water system is either a 'community water system' or a 'noncommunity water system' as follows:

- a. 'Community water system' means a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.
- b. 'Noncommunity water system' means a public water system which is not a community water system."

**Sec. 15.** G.S. 130A-315 is amended by adding the following subsection to read:

"(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The



standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems."

**Sec. 16.** Sections 5, 14, and 15 of this act become effective 1 July 1994. All other sections of this act become effective 1 October 1994, except that the amendment to G.S. 113A-64(a)(5) made by Section 11 of this act becomes effective 1 July 1995.

In the General Assembly read three times and ratified this the 17th day of July, 1994.

S.B. 1504

## CHAPTER 777

### AN ACT TO MAKE VARIOUS CHANGES IN THE BUDGET OPERATION OF THE STATE AND OTHER STATUTORY CHANGES.

*The General Assembly of North Carolina enacts:*

#### SWITCHED BROADBAND TELECOMMUNICATIONS

**Section 1.** (a) G.S. 143B-426.39 is amended by adding a new subdivision to read:

"(16) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

- a. Nonprofit educational institutions;
- b. The Microelectronics Center of North Carolina ('MCNC');
- c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;
- d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; or
- e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the Office of State Controller, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of State Controller, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision (16)a. through subdivision (16)e.

shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer."

(b) G.S. 62-3(23) is amended by adding a new subparagraph as follows:

- "i. The term public utility shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39."

## REDUCE PUBLICATION COSTS TO THE STATE/AUTHORIZE PUBLICATION OF THE NORTH CAROLINA ADMINISTRATIVE CODE BY CONTRACT WITH PRIVATE BUSINESS

Sec. 2. G.S. 150B-21.18 reads as rewritten:

"§ 150B-21.18. *North Carolina Administrative Code.*

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules."

## SCHOOL TEXTBOOK LAW CHANGES

Sec. 3. (a) G.S. 115C-88 reads as rewritten:

"§ 115C-88. *Commission to evaluate ~~books~~ textbooks offered for adoption.*

The members of the Commission who are teachers, principals or the parent of students ~~in the elementary grades~~ shall evaluate all textbooks offered for adoption ~~in the elementary grades. The members who are teachers, principals or the parent of students in the high schools shall evaluate all books offered for adoption in the high school grades.~~ adoption.

Each member shall examine carefully and file a written evaluation of each ~~book~~ textbook offered for adoption ~~in the category for which he is responsible.~~ adoption.

The evaluation report shall give special consideration to the suitability of the ~~book~~ textbook to the instructional level for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made."

(b) G.S. 115C-99 reads as rewritten:

"§ 115C-99. *Legal custodians of ~~books~~ textbooks furnished by State.*

Local boards of education are the custodians of all ~~books~~ textbooks purchased by the local boards with State funds. They shall

provide adequate and safe storage facilities for the proper care of these ~~books~~ textbooks and emphasize to all students the necessity for proper care of ~~textbooks~~."

(c) G.S. 115C-100 reads as rewritten:

"§ 115C-100. *Rental fees for textbooks prohibited; damage fees authorized.*

No local board of education may charge any pupil a rental fee for the use of textbooks. A pupil's parents or legal guardians may be charged damage fees for abuse or loss of textbooks under rules adopted by the State Board of Education. All money collected ~~on State-owned books as damage fees or from the sale of books~~ textbooks purchased with State funds under the provisions of this Part shall be paid annually as collected to the State Board of Education."

#### CHANGE NAME OF NORTH CAROLINA AIR CARGO AIRPORT AUTHORITY TO NORTH CAROLINA GLOBAL TRANSPARK AUTHORITY

Sec. 4. (a) The title of Chapter 63A of the General Statutes reads as rewritten:

"North Carolina ~~Air Cargo Transport~~ Global TransPark Authority."

(b) G.S. 63A-1 reads as rewritten:

"§ 63A-1. *Short title and intent.*

This Chapter is the 'North Carolina ~~Air Cargo Airport~~ Global TransPark Authority Act.' It is enacted in part pursuant to Article V, Section 13, of the North Carolina Constitution with the intent that the body politic and corporate created by this Chapter shall have all power and authority as may be provided to it under that section of the Constitution."

(c) G.S. 63A-2(3) reads as rewritten:

"(3) Authority. -- The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority."

(d) G.S. 63A-3(a) reads as rewritten:

"(a) Creation. The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority is created as a body corporate and politic having the powers and jurisdiction as provided under this Chapter or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority shall be located within the Department of Transportation, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Transportation and, notwithstanding any other provision of law, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting."

(d1) G.S. 63A-3(b) reads as rewritten:

"(b) Board of Directors. The Authority shall be governed by a Board of Directors. The Board shall consist of at least the following ~~19~~ 20 members:

(1) Seven members appointed by the Governor.

(2) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

- (3) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (4) The State Treasurer, who shall serve as an ex officio nonvoting member.
- (5) The President of the North Carolina System of Community Colleges, provided that the President of the North Carolina Community Colleges may instead appoint to the Board of Directors one member of the board of trustees of a community college or one president of a community college. If such an appointment is made, the appointee shall serve at the pleasure of the President.
- (6) The President of The University of North Carolina, provided that the President of the University of North Carolina may instead appoint to the Board of Directors one member of the board of trustees of a constituent institution of The University of North Carolina, or one chancellor of a constituent institution of The University of North Carolina. If such an appointment is made, the appointee shall serve at the pleasure of the President.
- (7) The Chairman of the State Ports Authority.
- (8) One member appointed by the board of county commissioners of any county in which the cargo airport complex site is located.
- (9) One member appointed by the city council of the city which is a county seat of any county in which the cargo airport complex site is located.
- (10) The Commissioner of Agriculture.

Within 90 days after the Authority acquires land, either by purchase or condemnation, for development as part of a cargo airport complex site, the board of county commissioners in any county in which a portion of the land is located and the city council of the city which is the county seat of the county shall, by resolution, each appoint a person to serve as a member of the Board. If the board of commissioners or the city council appoints one of its own members to the Board, the county commissioner or the member of the city council who is appointed is considered to be serving on the Board as an ex officio voting member as part of the duties of the office of county commissioner or the office of city council member, in accordance with G.S. 128-1.2, and is not considered to be serving in a separate office. Notwithstanding G.S. 116-31(h), a member of the board of trustees of a constituent institution of The University of North Carolina appointed to the Board of Directors under subdivision (6) of this subsection may concurrently serve on the board of trustees and the Board of Directors. Notwithstanding any other provision of law, the Governor may serve on the Board of Directors by his own appointment on or after July 16, 1991, under subdivision (1) of this subsection.

As the holder of an office, each member of the Board shall take the oath required by Article VI, § 7 of the North Carolina Constitution before assuming the duties of a Board member."

(e) G.S. 66-58(b)(17) reads as rewritten:

"(17) The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority or a lessee of the Authority."

(f) G.S. 120-123(25a) reads as rewritten:

"(25a) The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority as established under G.S. 63A-3."

(g) G.S. 126-5(c1)(15) reads as rewritten:

"(15) Employees of the North Carolina ~~Air Cargo Airport~~ Global TransPark Authority."

(h) G.S. 143-336 reads as rewritten:

"§ 143-336. *Definitions.*

As used in this Article:

'Agency' includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

'Community college buildings' means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

'Department' means the Department of Administration, unless the context otherwise requires.

'Public buildings' means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

'Public buildings and grounds' means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

'Public grounds' means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

'Secretary' means the Secretary of Administration, unless the context otherwise requires.

'State buildings' mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, and any buildings, utilities, or property owned or leased by the North Carolina ~~Air Cargo Airport~~ Global TransPark Authority.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State."

(i) G.S. 147-69.2(b)(11) reads as rewritten:

"(11) With respect to assets of the Escheat Fund, obligations of the North Carolina ~~Air Cargo Airport~~ Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this



subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss."

(j) G.S. 150B-1(d)(5) reads as rewritten:

"(5) The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex."

(k) G.S. 150B-1(e)(10) reads as rewritten:

"(10) The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex."

(l) Any reference to the North Carolina Air Cargo Airport Authority in any other act of the General Assembly is deemed to refer to the North Carolina Global TransPark Authority.

#### TORT CLAIMS AWARD INCREASE

Sec. 5. (a) G.S. 143-291(a) reads as rewritten:

"(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of ~~one hundred thousand dollars (\$100,000)~~ one hundred fifty thousand dollars (\$150,000) cumulatively to all claimants on account of injury and damage to any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State."

(b) This section becomes effective October 1, 1994, and applies to claims arising on or after that date.

#### DECELERATION OF DOWNDRIFT BEACH EROSION

Sec. 6. (a) G.S. 113-229(i) reads as rewritten:

"(i) All Subject to subsection (h1) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water."

(b) G.S. 113-229 is amended by adding a new subsection to read:

"(h1) All construction and maintenance dredgings of beach-quality sand may be placed on the downdrift beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift beaches."

#### FIRST FLIGHT COMMISSION ESTABLISHED

Sec. 7. (a) Chapter 143 of the General Statutes is amended by adding the following new Article to read:

##### "ARTICLE 67.

##### "First Flight Centennial Commission.

"§ 143-640. Commission established; purpose; members; terms of office; quorum; compensation; termination.

(a) Establishment. -- There is established the First Flight Centennial Commission. The Commission shall be located within the Department of Cultural Resources for organizational, budgetary, and administrative purposes.

(b) Purpose. -- The purpose of the Commission is to develop and plan activities to commemorate the centennial of the first successful manned, controlled, heavier-than-air, powered flight (in this Article referred to as 'the First Flight') and other historical events related to the development of powered flight.

(c) Membership. -- The Commission shall consist of 26 members, as follows:

- (1) Four persons appointed by the Governor.
- (2) Four persons appointed by the President Pro Tempore of the Senate.
- (3) Four persons appointed by the Speaker of the House of Representatives.
- (4) The following persons or their designees, ex officio:
  - a. The Governor.
  - b. The President Pro Tempore of the Senate.
  - c. The Speaker of the House of Representatives.
  - d. The United States Senators from this State.
  - e. The member of the United States House of Representatives for the Third Congressional District.
  - f. The Governor of the State of Ohio.
  - g. The Secretary of the Department of Cultural Resources.
  - h. The Superintendent of the Cape Hatteras National Seashore of the United States National Park Service.

- i. The chair of the Centennial of Flight Commemoration Commission.
- j. The President of the First Flight Society.
- k. The chair of the Dare County Board of Commissioners.
- l. The Mayor of the Town of Kill Devil Hills.
- m. The chair of the Dare County Tourism Board.

The members appointed to the First Flight Centennial Commission shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Commission, including individuals who have demonstrated expertise in the fields of aeronautics, aerospace science, or history, who have contributed to the development of the fields of aeronautics or aerospace science, or who have demonstrated a commitment to serving the public.

(d) Terms. -- Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

- (1) The Governor shall initially appoint two members for a term of two years and two members for a term of three years.
- (2) The President Pro Tempore of the Senate shall initially appoint two members for a term of two years and two members for a term of three years.
- (3) The Speaker of the House of Representatives shall initially appoint two members for a term of two years and two members for a term of three years.

Initial terms shall commence on July 1, 1994.

(e) Chair. -- The chair shall be appointed biennially by the Governor from among the membership of the Commission. The initial term shall commence on July 1, 1994.

(f) Vacancies. -- A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made and the term shall be for the balance of the unexpired term.

(g) Compensation. -- The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. -- Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. -- The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. -- A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(k) Termination of Commission. -- The Commission shall terminate June 30, 2004, which is six months after the 100th anniversary of the First Flight.

"§ 143-641. Powers and duties of the Commission.

(a) Powers and Duties. -- The Commission shall have the following powers and duties:

- (1) To plan and develop activities appropriate to commemorate the centennial of the First Flight, including the coordination of activities throughout the State and nation.
- (2) To coordinate with the national Centennial of Flight Commemoration Commission and the 2003 Fund Commission of Ohio in planning and promoting commemorative events and activities.
- (3) To appoint a director, who shall be exempt from the State Personnel Act, to employ other staff as it deems necessary, subject to the State Personnel Act, and to fix their compensation.
- (4) To adopt bylaws by a majority vote of the Commission.
- (5) To accept grants, contributions, devises, bequests, gifts, and services for the purpose of providing support to the Commission. The funds and property shall be retained by the Commission, and the Commission shall prescribe rules under which the Commission may accept donations of money, property, or personal services, and determine the value of donations of property or personal services.
- (6) To design, seek clearance for, and register with the Secretary of State a logo as the official emblem of the First Flight celebration, in coordination with the federal advisory commission. The Commission shall issue rules regarding the use of the logo.

(b) Commemoration Activities. -- In planning and implementing appropriate activities to commemorate the centennial of the First Flight, the Commission shall give due consideration to:

- (1) The historical setting in which the First Flight of the Wright Brothers took place.
- (2) The contribution of powered flight to the development of transportation worldwide.
- (3) The contribution that powered flight has made to worldwide trade and the economic development of the United States and all nations.
- (4) The contribution that powered flight has made to world peace and security.
- (5) The need to educate the public regarding the research and development of powered flight, and to acknowledge the development of aeronautics, aerospace science, and the aerospace industry, including the development of the glider and Orville and Wilbur Wright's contribution to the development of the glider.
- (6) The development of aerospace science and the aerospace industry since the First Flight, including the development of space exploration.
- (7) The importance of activities to commemorate the First Flight and to honor Orville and Wilbur Wright and their contribution to powered flight.
- (8) The need to expand the facilities of the Wright Brothers National Memorial to honor Orville and Wilbur Wright and to educate the

public regarding the development of powered flight and the development of aeronautics and aerospace science since the First Flight.

- (9) The commitment and efforts of the First Flight Society and the National Park Service to preserving the Wright Brothers National Memorial and to honoring Orville and Wilbur Wright on the centennial of the First Flight.

(c) Contract Authority. -- The Commission may procure supplies, services, and property as appropriate, and may enter into contracts, leases, or other legal agreements to carry out the purposes of this Article. All contracts, leases, or legal agreements entered into by the Commission shall terminate on the date of termination of the Commission. Termination shall not affect any disputes or causes of action of the Commission that arise before the date of termination, and the Department of Cultural Resources may prosecute or defend any causes of action arising before the date of termination. All property acquired by the Commission that remains in the possession of the Commission on the date of termination shall become the property of the Department of Cultural Resources.

"§ 143-642. Assignment of property; offices.

(a) Assignment of Property. -- Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Article. Assignments under this subsection shall be without reimbursement by the Commission to the agency from which the assignment was made. Property and equipment that remains in the possession of the Commission on the date of the termination of the Commission shall revert to the agency from which the property was acquired.

(b) Office Space. -- The Department of Cultural Resources shall provide office space in Raleigh for use as offices by the First Flight Centennial Commission, and the Department of Cultural Resources shall receive no reimbursement from the Commission for the use of the property during the life of the Commission.

"§ 143-643. Commission reports.

(a) Annual Report. -- Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for commemoration of the First Flight and other historical events related to the development of powered flight. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly until the Commission terminates. The report shall include:

- (1) Recommendations for appropriate activities for the commemoration, including:
- a. Publications, both printed and electronic, of books, periodicals, films, videotapes, and other promotional and educational materials.
  - b. Scholarly projects, conferences, lectures, seminars, and programs.



- c. Libraries, exhibits, and museums.
- d. Competitions and awards for historical, scholarly, artistic, and other works and projects related to the centennial.
- e. Ceremonies and celebrations, including a calendar of major activities, commemorating the centennial and other related historical events and achievements.
- (2) Recommendations for legislation and administrative action to promote and develop the commemoration.
- (3) An accounting of funds received and expended.
- (b) Final Report. -- The Commission shall submit a final report to the General Assembly no later than June 30, 2004. The final report shall include:
  - (1) A summary of the activities of the Commission.
  - (2) A final accounting of funds received and expended by the Commission.
  - (3) Recommendations concerning the disposition of historically significant property donated to or acquired by the Commission."
- (b) The Department of Cultural Resources shall use funds within its budget for the 1994-95 fiscal year, in the amount of seventy-five thousand dollars (\$75,000) for the establishment and operation of the First Flight Centennial Commission during the term of the Commission.

#### RANDLEMAN DAM RESERVE RELEASE RESTRICTIONS

Sec. 8. (a) The funds appropriated in Chapter 769 of the 1993 Session Laws for the Randleman Dam shall be held in a Reserve and released only as provided in this section.

(b) If the May 12, 1994, order of the Wake County Superior Court nullifying the decision and certificate of the Environmental Management Commission authorizing the Piedmont Triad Water Authority to condemn land and to carry out certain interbasin transfers of water is appealed, then the funds shall be released on the earlier of:

- (1) The Court of Appeals or Supreme Court overturning the Superior Court decision or remanding it for further consideration; or
- (2) A final decision by the Environmental Management Commission granting authority to proceed with the project, in the event the issue is either remanded for a new hearing or a new hearing is scheduled by consent of the parties or there is a new hearing process before the Environmental Management Commission pertaining to a certificate for interbasin transfers.

(c) All funds appropriated in Chapter 769 of the 1993 Session Laws for the construction of Randleman Dam shall revert to the General Fund on October 1, 1996, if construction has not begun before that date.

#### TECHNICAL CORRECTIONS CHAPTER 769

Sec. 9. (a) Section 3 of Chapter 769 of the 1993 Session Laws is amended in the NONRECURRING column by adding one million eight hundred thousand dollars (\$1,800,000) to the line for North Carolina School of the Arts and a like amount to the total for The University of North Carolina - Board of Governors.

(b) Section 3 of Chapter 769 of the 1993 Session Laws is amended in the NONRECURRING column by changing the amount in the line for Department of Environment, Health, and Natural Resources to "8,106,546".

(c) Section 3 of Chapter 769 of the 1993 Session Laws is amended in the NONRECURRING column by changing the amount in the line for Department of Commerce to "18,785,509".

(d) The second Section 24.8 of Chapter 769 of the 1993 Session Laws is redesignated as Section 24.8A.

(e) Section 19.26(d) of Chapter 769 of the 1993 Session Laws is amended by adding a period at the end.

(f) Section 16.2(b) of Chapter 769 of the 1993 Session Laws is amended by deleting "160A", and substituting "163".

(g) Section 19.17 of Chapter 769 of the 1993 Session Laws is amended in the first paragraph by deleting the language "fifty-five million eight hundred twenty-four thousand one hundred thirty-six dollars (\$55,824,136)" and substituting "forty-five million eight hundred fifty-six thousand four hundred thirty-eight dollars (\$45,856,438)".

**Sec. 10.** Unless otherwise specified, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1994.

H.B. 1940

## CHAPTER 778

## AN ACT TO ESTABLISH A COMMERCIAL SPECIAL DEVICE LICENSE.

Whereas, the United States Supreme Court has recognized that a retaliatory tax imposed by a state serves the legitimate state purpose of deterring other states from imposing discriminatory or excessive taxes on a business that is domiciled in that state and operates in other states; and

Whereas, retaliatory fishing license fees imposed by a state serve the same purpose of deterring another state from imposing fishing license fees on residents of that state that are discriminatory or excessive when compared to the fees imposed on residents of the other state; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 113-272.2(c) reads as rewritten:

"(c) The special device licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident Noncommercial Special Device License -- \$10.00. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with no more than three special devices authorized by the rules of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the

license to specified registered equipment, require tagging of items of equipment, charge up to one dollar (\$1.00) per tag issued, and require periodic catch data reports. Unless specifically prohibited, nongame fish lawfully taken under this license may be sold.

- (1a) Resident Commercial Special Device License -- \$100.00. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with four or more special devices authorized by the rules of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the license to specified registered equipment, require tagging of items of equipment, charge up to one dollar (\$1.00) per tag issued, and require periodic catch data reports. Nongame fish lawfully taken under this license may be sold.
- (2) Nonresident Noncommercial Special Device License -- \$50.00. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid for use only by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1) above, of this subsection.
- (2a) Nonresident Commercial Special Device License -- \$100.00 or the amount the nonresident's state of residence charges a North Carolina resident to engage in the activity authorized by this license, whichever is higher. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1a) of this subsection.
- (3), (4) Repealed by Session Laws 1987, c. 156, s. 11, effective July 1, 1987."

Sec. 2. This act becomes effective August 1, 1994.

In the General Assembly read three times and ratified this the 17th day of July, 1994.



## RESOLUTIONS

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H.J.R. 1559

### RESOLUTION 32

A JOINT RESOLUTION AUTHORIZING THE 1993 GENERAL ASSEMBLY, REGULAR SESSION 1994, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOE MAX THOMAS, FORMER STATE SENATOR.

*Be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The 1993 General Assembly, Regular Session 1994, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOE MAX THOMAS, FORMER STATE SENATOR."

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1994.

H.J.R. 2105

### RESOLUTION 33

A JOINT RESOLUTION AUTHORIZING THE 1993 GENERAL ASSEMBLY, REGULAR SESSION 1994, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF RAY CHARLES FLETCHER, FORMER MEMBER OF THE GENERAL ASSEMBLY.

*Be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The 1993 General Assembly, Regular Session 1994, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF RAY CHARLES FLETCHER, FORMER MEMBER OF THE GENERAL ASSEMBLY."

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1994.

S.J.R. 1616

### RESOLUTION 34

A JOINT RESOLUTION AUTHORIZING THE 1993 GENERAL ASSEMBLY, REGULAR SESSION 1994, TO CONSIDER A BILL TO



BE ENTITLED AN ACT TO MAKE TECHNICAL CHANGES IN G.S. 58-57-100 TO FURTHER DEFINE AUTOMOBILE PHYSICAL DAMAGE INSURANCE AND TO MAKE A CONFORMING CHANGE.

*Be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The 1993 General Assembly, Regular Session 1994, may consider "A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CHANGES IN G.S. 58-57-100 TO FURTHER DEFINE AUTOMOBILE PHYSICAL DAMAGE INSURANCE AND TO MAKE A CONFORMING CHANGE."

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1994.

S.J.R. 1717

### RESOLUTION 35

A JOINT RESOLUTION AUTHORIZING THE 1993 GENERAL ASSEMBLY, REGULAR SESSION 1994, TO CONSIDER A JOINT RESOLUTION HONORING THE CITY OF MOUNT AIRY ON BEING NAMED AN ALL AMERICA CITY.

*Be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The 1993 General Assembly, Regular Session 1994, may consider "A JOINT RESOLUTION HONORING THE CITY OF MOUNT AIRY ON BEING NAMED AN ALL AMERICA CITY."

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1994.

H.J.R. 2131

### RESOLUTION 36

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF RAY CHARLES FLETCHER, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Ray Charles Fletcher was born in Forest City in Rutherford County, on May 4, 1931, to Troy Fletcher, Sr. and Geneva Beddingfield Fletcher; and

Whereas, Ray Charles Fletcher graduated from Drexel High School in Burke County and attended the University of North Carolina at Chapel Hill; and

Whereas, Ray Charles Fletcher served his country as a member of the United States Navy from 1951 until 1954; and

Whereas, Ray Charles Fletcher became an automobile dealer and was Secretary-Treasurer of Fletcher Pontiac, Inc.; and

Whereas, Ray Charles Fletcher worked unselfishly for the betterment of his community as a member of many civic and community organizations; and

Whereas, Ray Charles Fletcher served as President of the Rotary Club, as a member of the Burke County Chamber of Commerce, as President of the Valdese Merchants Association, as President of the Lovelady United Fund, as President of the Valdese Jaycees, and as Chair of the Valdese Parks and Recreation; and

Whereas, Ray Charles Fletcher was honored as "Rotarian of the Year" in 1965 and as "Young Man of the Year" by the Valdese Jaycees in 1961; and

Whereas, Ray Charles Fletcher was active in politics; he served as the Mayor of the Town of Valdese, as Chair of the Burke County Democratic Party, and as President and Chair of the Burke County Young Democrats Club; and

Whereas, Ray Charles Fletcher served with honor and distinction for five terms as a member of the North Carolina House of Representatives from 1983 until 1992; and

Whereas, as a member of the General Assembly, Ray Charles Fletcher served on numerous committees in various leadership roles, including Finance, Public Employees, Ethics, and Pensions and Retirement; and

Whereas, Ray Charles Fletcher served as Chair of the Commerce Subcommittee on Financial Institutions and as Chair of the Environment Subcommittee on Water, Air, and Soil; and

Whereas, Ray Charles Fletcher was honored as "Consumer Advocate of the Year", as "Legal Services Advocate of the Year", and as "Keeper of Mountain Tops" for his consumer and environmental work; and

Whereas, Ray Charles Fletcher was an active member of the Waldensian Presbyterian Church, serving as former deacon; and

Whereas, Ray Charles Fletcher married Mary Beth Goodman on November 29, 1980; and

Whereas, Burke County and the State of North Carolina suffered a great loss with the untimely death of Ray Charles Fletcher on September 27, 1992; and

Whereas, Ray Charles Fletcher is survived by his wife, Mary Beth Fletcher, and children, Raye Lynn, Randy, and Ruth;

*Now, therefore, be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The General Assembly honors the life and memory of Ray Charles Fletcher and expresses its appreciation for the service he rendered to his community, State, and nation.

**Sec. 2.** The General Assembly expresses its deepest sympathy to the family and friends of Ray Charles Fletcher for the loss of a beloved family man, friend, and public servant.

**Sec. 3.** The Secretary of State shall transmit a certified copy of this resolution to the family of Ray Charles Fletcher.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1994.

S.J.R. 1709

**RESOLUTION 37**

**A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF HUGH WELLS MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.**

Whereas, under the provisions of G.S. 62-10 appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission because of the resignation of John Thomas; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to serve the remainder of the unexpired term on the North Carolina Utilities Commission of John Thomas, which will expire June 30, 2001;

*Now, therefore, be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The appointment of Hugh Wells to the North Carolina Utilities Commission for a term to expire June 30, 2001, is confirmed.

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

H.J.R. 1975

**RESOLUTION 38**

**A JOINT RESOLUTION AUTHORIZING THE 1993 GENERAL ASSEMBLY, REGULAR SESSION 1994, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO LEASE A CERTAIN DESIGNATED PART OF THE RIGHT-OF-WAY OF N.C. 147 TO THE CITY OF DURHAM FOR PARKING PURPOSES.**

*Be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The 1993 General Assembly, Regular Session 1994, may consider "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO LEASE A CERTAIN DESIGNATED PART OF THE RIGHT-OF-WAY OF N.C. 147 TO THE CITY OF DURHAM FOR PARKING PURPOSES."

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.J.R. 1725

**RESOLUTION 39**

**A JOINT RESOLUTION CONCERNING ADJOURNMENT SINE DIE.**

*Be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** Section 3 of Resolution 31 of the 1993 Session Laws is repealed.

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

S.J.R. 1720

**RESOLUTION 40**

**A JOINT RESOLUTION HONORING THE CITY OF MOUNT AIRY ON BEING NAMED AN ALL AMERICA CITY.**

Whereas, the City of Mount Airy was recently honored by the National Civic League as one of 10 municipalities nationwide to receive the All America City Award; and

Whereas, the All America City Award recognizes excellence in local efforts to strengthen the civic infrastructure of America's communities; and

Whereas, the City of Mount Airy successfully competed against more than 150 entries and was the only North Carolina city to win the All America City Award this year; and

Whereas, Mount Airy's accomplishment deserves recognition;

*Now, therefore, be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The General Assembly recognizes the City of Mount Airy on receiving the National Civic League's All America City Award. The General Assembly congratulates the members of the City of Mount Airy All America City Award Committee and the citizens of Mount Airy for their efforts in helping the city receive this national award.

**Sec. 2.** The Secretary of State shall transmit a copy of this resolution to the Mayor of the City of Mount Airy, to the members of the City of Mount Airy All America City Award Committee, and to the Chair of the Surry County Board of County Commissioners.

**Sec. 3.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

H.J.R. 2134

**RESOLUTION 41**

**A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE GENERAL ASSEMBLY.**

*Be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The Senate and House of Representatives constituting the General Assembly of 1993 do adjourn *sine die* on Sunday, July 17, 1994, at 1:00 a.m.

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1994.

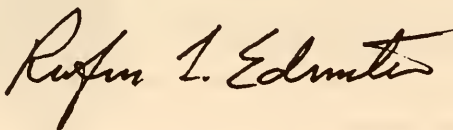


STATE OF NORTH CAROLINA

DEPARTMENT OF STATE,

RALEIGH, JULY 17, 1994

I, RUFUS L. EDMISTEN, Secretary of State of North Carolina, hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

A handwritten signature in black ink, reading "Rufus L. Edmisten". The signature is written in a cursive style with a large, stylized initial 'R'.

*Secretary of State*

# APPENDIX

## EXECUTIVE ORDERS OF GOVERNOR JAMES B. HUNT, JR.

Title	Number
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# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

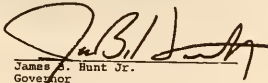
## EXECUTIVE ORDER 41 EXTENDING THE GOVERNOR'S COMMISSION ON REDUCTION OF INFANT MORTALITY

By the authority vested in me as Governor by the laws and constitution of North Carolina, IT IS ORDERED:

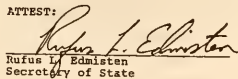
The Governor's Commission on Reduction of Infant Mortality, as established in Martin Administration Executive Order Number 99 and extended by Number 185, is hereby extended until June 30, 1995.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 12th day of April, 1994.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER 42 RESCISSION OF EXECUTIVE ORDERS

By the authority vested in me as Governor by the laws and constitution of North Carolina, IT IS ORDERED:

### Section 1.

Executive Order 78 of the Martin Administration (Governor's Task Force on Injury Prevention), as extended by Executive Order 185, is hereby rescinded.

### Section 2.

Executive Order 136 of the Martin Administration (North Carolina Advisory Council on Telecommunications in Education), as extended by Executive Order 185, is hereby rescinded.

### Section 3.

Executive Order 153 of the Martin Administration (North Carolina 2000 Steering Committee), as extended by Executive Order 185, is hereby rescinded.

### Section 4.

Executive Orders 110 and 161 of the Martin Administration (Advisory Council on International Trade) is hereby rescinded.

### Section 5.

Executive Order 36 of the Martin Administration (Governor's Advisory Committee on Agricultural Parks) is hereby rescinded.

Section 6.

Executive Order 156 of the Martin Administration (North Carolina Committee on Literacy and Basic Skills), as amended by Executive Order 185, is hereby rescinded.

Section 7.

Executive Order 143 of the Martin Administration (North Carolina Advisory Council on Vocational and Applied Technology Education), as extended by Executive Order 185, is hereby rescinded.

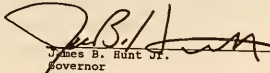
Section 8.

Memorandum of Agreement concerning the establishment of the De Soto Trail Commission, dated April 13, 1988, is hereby rescinded.

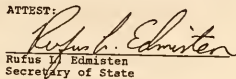
This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 12th day of

April, 1994.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State





# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER 43 NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the authority vested in me as Governor by the laws and constitution of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

The North Carolina State Health Coordinating Council is hereby established.

### Section 2. Duties.

The Council shall have the following duties and functions:

- (a) Serve as a forum for hearing regional concerns and recommendations relating to health planning.
- (b) Compile a list of state health needs and advise the Department of Human Resources.
- (c) Advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional and statewide needs.
- (d) Review and comment on contents of documents related to health planning and make recommendations concerning them to the Secretary of Human Resources and the Governor.
- (e) Advise the Department of Human Resources on cost effective mechanisms for achieving health needs.

- (f) Prepare the Annual State Medical Facilities Plan and present the plan to the Governor.

Section 3. Membership.

The Council shall consist of 27 members who shall be appointed by the Governor as follows:

- (e) One member from the academic medical centers.
- (h) One member from the area health education centers.
- (c) Two members from business and industry (at least one individual representing small business and one representing large business).
- (d) One member from the health insurance industry.
- (e) One member from the North Carolina Association of County Commissioners.
- (f) One member from the North Carolina Health Care Facilities Association.
- (g) One member from the North Carolina Hospital Association.
- (h) One member from the North Carolina Association for Home Care.
- (i) One member from the North Carolina Association of Long Term Care Facilities.
- (j) One member from the North Carolina Association of Local Health Directors.
- (k) One member from the North Carolina Medical Society.
- (l) One member from the North Carolina House of Representatives.
- (m) One member from the North Carolina Senate.
- (n) One member from the United States Department of Veterans Affairs (non-voting).

- (c) Twelve at-large members to represent other health professional associations and to ensure regional representation.

Section 4. Terms of Membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years, and nine to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years. Terms shall expire on December 31 and new terms shall begin on January 1.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

Section 7. Chairman.

The Chairman and Vice Chairman of the Council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet quarterly and at other times at the call of the Chairman or upon written request of at least ten (10)

of its members. All business meetings of the Council, its committees and subcommittees, or special task forces shall be open to the public.

Section 9. Staff Assistance.

The Department of Human Resources shall provide clerical support and other services required by the Council.

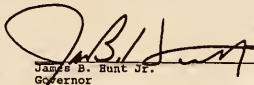
Section 10.

Executive Order Number 13, as amended by Executive Orders 51, 93 and 185, of the Martin Administration is hereby rescinded.

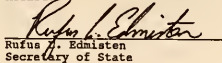
This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 15<sup>th</sup> day of

April, 1994.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 44  
NORTH CAROLINA COMMISSION ON  
BUSINESS LAWS AND THE ECONOMY

WHEREAS, the State of North Carolina is committed to the development of a strong economy for the people of the State, to increasing the ability of North Carolina's people, communities, and enterprises to compete successfully in an increasingly competitive marketplace, and to insuring the long-term economic prosperity and quality of life for the citizens of the State; and

WHEREAS, businesses exist in a complicated legal environment which can be unduly restrictive and hinder their ability to operate and grow and which can discourage new businesses from locating in the State; and

WHEREAS, there is currently no state government organization, board or commission dedicated exclusively to a comprehensive study of state statutes, court opinions, and agency rules and regulations affecting the operation of business for the purposes of (1) ensuring that existing statutes, rulings, rules and regulations are supportive of sound purposes, are meaningful in light of changing business and legal environments, and are necessary and relevant and (2) determining whether new statutes, rules and regulations may be needed to help assure that North Carolina maintains a legal environment which provides the flexibility and support to allow



businesses to operate successfully in this state and to attract them to locate here; and

WHEREAS, building the long-term economic capacity for the people, communities, and enterprises of North Carolina requires concerted, coordinated and cooperative effort by those who determine state laws and regulations and those who work in private enterprise and bear the responsibility of operating businesses in the State consistent with said laws, rules and regulations;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment and Composition.

The North Carolina Commission on Business Laws and the Economy is hereby established. The Commission shall be composed of twenty-three members appointed by the Governor as follows:

- (a) Nine members representing public and private corporations.
- (b) Four practicing attorneys in the State of North Carolina, one of whom shall serve as Reporter for the Commission.
- (c) One member of the North Carolina House of Representatives.
- (d) One member of the North Carolina State Senate.
- (e) One representative from North Carolina universities.
- (f) One member of the North Carolina Economic Development Board.
- (g) One representative of the Business Section of the North Carolina Bar Association.
- (h) One representative of the North Carolina Citizens for Business and Industry.
- (i) The Secretary of State, or his designee.
- (j) The Attorney General, or his designee.
- (k) The Lieutenant Governor, or his designee.

- (1) The Secretary of the Department of Commerce, or his designee.

Members shall serve at the pleasure of the Governor. The Attorney General shall serve as Chair of the Commission.

Section 2. Purposes and Duties.

The purposes of the Commission are to recommend to the North Carolina General Assembly any needed changes in existing statutes and regulations which affect the operation of businesses in North Carolina, particularly Chapter 55 of the North Carolina General Statutes entitled "The North Carolina Business Corporation Act," and to recommend any needed new statutes, rules and regulations designed to assure that North Carolina offers a legal environment which provides the flexibility and support to allow businesses to operate successfully in this state and which will attract them to locate and incorporate here. The first report of the Commission shall be presented to the Governor and to the 1995 session of the General Assembly for their consideration.

The Commission shall, in the performance of its duties:

- (a) Gather and study such data and information as may be necessary and useful for accomplishing the purposes of this Commission.
- (b) Work cooperatively with other boards, commissions, and entities and take maximum advantage of their resources and activities that can provide useful information and insight to the purposes of this Commission.
- (c) Prepare an annual report on its findings and recommendations for presentation to the Governor and the General Assembly.

Section 3. Meetings.

The Commission shall meet at least once each quarter and may hold special meetings at any time at the call of the Chair.

Section 4. Expenses.

Commission members representing the business, professional and academic communities shall receive no per diem or expenses in connection with the work of the Commission. The expenses of Commission members representing state agencies shall be paid by their respective agencies pursuant to N.C.G.S. 138-5. Expenses incurred by the Commission in connection with meetings and the preparation therefor shall be paid from the budget of the North Carolina Department of Commerce. Administrative and staff support for the Commission shall be provided by the North Carolina Attorney General.

The Commission is authorized to accept grants, gifts, bequests, and other offers of assistance necessary to carry out its tasks and functions. Also, each state agency cooperating in the work of the Commission may provide additional funds from its own budget to support the Commission.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the

19th day of April, 1994.



James B. Hunt Jr.  
Governor

ATTEST:

Rufus L. Edmisten  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 45  
GOVERNOR'S INITIATIVE TO STRENGTHEN NORTH CAROLINA  
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

There shall be established the Governor's Initiative to Strengthen North Carolina Historically Black Colleges and Universities, to advance the development of human potential, to enhance the capacity of Historically Black Colleges and Universities (HBCUS), to provide quality education and to increase opportunities to participate in and benefit from federal and state financially assisted programs.

Section 2. Advisory Council.

(a) The Governor's Advisory Council on North Carolina Historically Black Colleges and Universities is hereby established. For organizational purposes, the Council shall be placed in the Office of the Special Assistant to the Governor. The Advisory Council shall issue an annual report to the Governor on participation by agencies with HBCUS. The Council shall also provide advice to the Special Assistant.

(b) The members of the Council shall be appointed by the Governor. The Council shall include representatives of HBCUS, other institutions of higher education, business and financial institutions and private foundations. The Council shall be composed of 12 members. One-half of the members shall serve initial terms of two years and one-half shall serve initial terms of four years. Thereafter, terms shall be for four years.

(c) The Office of the Special Assistant shall provide staff assistance to the Advisory Council and assist the Governor as liaison between the departments and agencies of state government and HBCUS.

### Section 3. Procedure.

(a) To carry out the purposes of this Order, each state department or agency designated by the Governor shall, consistent with applicable law, enter into appropriate contracts, grants, or cooperative agreements with HBCUS. The head of each department or agency subject to this Order shall establish an annual goal for the amount of financial assistance to be awarded in contracts, grants, or cooperative agreements to HBCUS. The goal shall be an amount equal to or above the actual amount of such awards from the previous fiscal year, with effort being made to increase assistance to HBCUS. To facilitate the attainment of the goals established, departments or agencies subject to this Order shall provide technical assistance and information to HBCUS regarding the agency's programs and the preparation of applications or proposals for grants, contracts or cooperative agreements.

(b) Each designated department or agency shall appoint a senior official, who is a full-time employee of state government and



who is responsible for management or program administration, to report directly to the department or agency head, or his or her designee, and to serve as liaison to the Council and the Office of Special Assistant.

(c) Each designated department or agency shall develop and document an annual plan for the agency's effort to increase the ability of BECUS to participate in state and federally sponsored programs. These plans shall describe the objectives for proposed agency actions to fulfill this Order and shall be submitted at such time and in such form as the Governor shall designate. In consultation with participating agencies, the Special Assistant and the Council shall review these plans and include their findings in the yearly report to the Governor.

(d) The designated state departments or agencies will examine unintended or arbitrary barriers, determine the adequacy of the dissemination of information on programmatic and financial opportunities of interest to the BECUS and identify ways of assuring equity and fairness.

(e) In its yearly report to the Governor, the Council shall relate the progress achieved in enhancing the role and capabilities of BECUS, including findings and recommendations on the Annual Performance Reports. The report also shall advise the Governor on how to increase the private sector's role in strengthening BECUS. Particular emphasis shall be placed on enhancing institutional infrastructure and on facilitating planning, development and the use of new technology to ensure long-term viability and growth. The Special Assistant shall disseminate the annual report to members of the General Assembly, Council of State and Cabinet and seek to

ensure that findings of the Council are taken into account in the policies and actions of every designated department or agency.

(f) The Office of the Special Assistant, along with other state departments and agencies, shall work to encourage the private sector to assist HBCUS through increased use of such devices and activities as:

- (1) private sector matching funds to support increased endowments, and
- (2) private sector expertise to facilitate the development of more effective ways to manage finances, improve information management, strengthen facilities and improve course offerings.

(g) The Governor's Advisory Council through the Governor's HBCUS Initiatives, shall provide advice on how HBCUS can achieve greater financial security. The Council shall consider how such institutions can enlist the resources and experience of the private sector to achieve such security.

(h) In consultation with the State Personnel Director and the Governor's Director of Personnel, the Special Assistant shall develop a program to improve recruitment and participation of graduates and undergraduate students of HBCUS in part-time, temporary, intern, and permanent positions in state government.

#### Section 4. Administration.

(a) Members of the Governor's Advisory Council shall serve without compensation, but shall be allowed travel expenses, as available.

(b) The Office of the Special Assistant shall provide such administrative services for the Council as may be required.

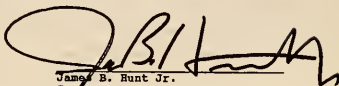
Section 5. Effect on Prior Orders.

Executive Order Number 24 of the Martin Administration is hereby rescinded.

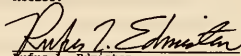
This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 24th day of

April, 1994.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 46  
COMMISSION ON SUBSTANCE ABUSE TREATMENT AND PREVENTION

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment and Membership.

- (a) There is hereby established a Commission on Substance Abuse Treatment and Prevention ("Commission") and an Office of Substance Abuse Policy ("Office").
- (b) The Commission shall consist of twenty persons appointed by the Governor. The Governor shall designate the Chair of the Commission. All Commission members shall serve at the pleasure of the Governor.
- (c) Members shall be citizens, government officials and representatives of nonprofit organizations who have demonstrated interest, involvement, or expertise in issues related to prevention, intervention, and treatment of alcohol and other drug abuse.
- (d) For the initial appointment period, ten of the members shall serve two-year terms and ten members shall serve four-year terms. At the expiration of these terms, subsequent member appointments shall be for four-year terms.

- (e) The Commission shall meet regularly at the call of the Chair.

Section 2. Functions.

In fulfilling its responsibilities, the Commission shall have the following duties:

- (a) Engender cooperation and collaboration among agencies, public and private, involved in drug and alcohol abuse programs;
- (b) Review the North Carolina laws regarding substance abuse, including criminal and service-delivery statutes, and make recommendations concerning needed changes;
- (c) Review and recommend mechanisms for the coordination of state and local resources for addressing identified needs;
- (d) Conduct public hearings and advise the Governor and other appropriate state government departments and agency heads of the result and recommendations of the Commission;
- (e) Encourage local boards, councils, or commissions to mobilize resources to address substance abuse problems;
- (f) Encourage local boards, councils, or commissions to develop an implementation plan to meet identified needs;
- (g) Assist local boards, councils, or commissions in identifying model prevention, intervention, and treatment efforts;
- (h) Encourage program activities that increase public awareness of substance abuse and strategies to decrease the problem; and



- (i) Other duties as assigned by the Governor and/or Secretary of the Department of Administration.

Section 3. Administration.

- (a) The heads of all State departments and agencies shall, to the extent permitted by law, provide the Commission and the Office with information they require to achieve the purposes of this Order.
- (b) The Office shall hire such staff as may be necessary to help the Commission accomplish its goals, contingent upon the availability of funds.
- (c) Members of the Commission shall serve without compensation, but may receive reimbursement contingent on the availability of funds for travel and subsistence expenses in accordance with state guidelines and procedures.
- (d) The Commission and the Office shall be funded by the Governor's discretionary funds and from agencies who have primary responsibility for involvement in program issues affecting drugs and alcohol. For administrative purposes, the Commission and the Office shall be housed in the Department of Administration. Oversight shall be with the Governor's Policy Office.

Section 4. Reports.

- (a) Every department, agency, institution, and organization subject to the Executive Budget Act (Chapter 143 of the General Statutes), and a direct or indirect recipient of state or federal substance abuse funding, shall report specific program and fiscal information semi-annually to

the Office, in a report format approved by that office and the Office of State Budget and Management.

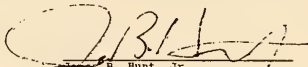
- (b) These reports shall, at least, include a report of all revenues and expenditures for the period. In addition, each report shall contain expenditure activity against explicit substance abuse program performance measures determined by the department, agency, institution, or organization consistent with nomenclature and procedures for performance-based budgeting established by the Office of State Budget and Management.
- (c) The Commission and the Office shall report their findings and recommendations to the Governor.

Section 5. Rescission.


Executive Orders 23, 64, and 132 of the Martin Administration are hereby rescinded.

This Executive Order is effective this the 27<sup>th</sup> day of April, 1994.



  
James B. Hunt, Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 47  
BOARD OF EDUCATION FOR THE SCHOOLS FOR THE DEAF

By the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment and Purpose.

There is hereby created the Board of Education for the Schools for the Deaf ("Board"). Its purpose shall be to provide direction and guidance to the North Carolina Schools for the Deaf ("Schools") and the Department of Human Resources ("DER").

Section 2. Membership and Terms.

The Board shall consist of 12 voting members appointed by the Governor as follows:

- (A) Three members shall be parents of students that have attended the North Carolina Schools for the Deaf, with each of the three Schools represented;
- (B) Three members shall be at-large representatives;
- (C) Three members shall be educators with training in deaf education and awareness of current deaf issues and needs;
- (D) Two members of the business community who have vocational placement expertise; and
- (E) One member who is a past attendee of one of the Schools or a member of the North Carolina Association of the Deaf.

(F) In addition, three students, one from each of the Schools, shall serve as non-voting advisors.

Three members shall be designated to serve initial terms of four years, three to serve initial terms of three years, three to serve initial terms of two years and three members to serve initial terms of one year. After the initial appointees' terms have expired, all members shall be appointed for a term of four years. No member appointed by the Governor shall serve more than two successive terms.

To the extent possible, each member should have a background or interest in deaf children and their educational needs. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Chair of the Board shall be designated by the Secretary of the DER from among the Board members and shall hold this office for a two-year term. The Chair may be reappointed for additional terms.

Section 3. Meetings and Administration.

- (A) The Board shall meet quarterly and at other times at the call of the Chair. A simple majority of the Board shall constitute a quorum. An affirmative vote of a majority of the Board shall be required to take action.
- (B) Board members shall be reimbursed by DHR for subsistence and travel expenses in accordance with N.C.G.S. 138-5 or 138-6.
- (C) DHR shall provide clerical and other administrative assistance to the Board.

- (D) The Chair shall mail a copy of each Board meeting agenda to the Chair of the Council for the Deaf and Hard of Hearing (set up in N.C.G.S. 143B-216.31) ten days prior to the meeting.

Section 4. Duties.

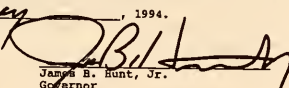
- (A) Evaluate and recommend changes to the Secretary of DHR on academic, curriculum, facility and budgetary matters in the Schools.
- (B) Work to ensure equal access to a free, appropriate public education for all deaf children at the Schools.
- (C) Review program development and consistency toward the goal of 24-hour quality educational, vocational, and residential programs at the Schools.
- (D) Formulate and recommend to the Secretary of DHR policies, procedures, and quality assurance methods to achieve that goal.
- (E) Interface with the Council for the Deaf and Hard of Hearing on issues of mutual interest.

This Order is effective immediately and shall terminate in four years, unless extended by further executive order.

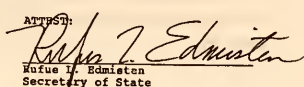
Done in the Capital City of Raleigh, North Carolina, this the

10th day of May, 1994.



  
James B. Hunt, Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NUMBER 48 CONCERNING THE STATE COMMISSION ON NATIONAL AND COMMUNITY SERVICE

WHEREAS, the increasing realization of the importance of volunteerism and civic participation, the growing recognition of community service as a means of community and state problem-solving, and the revival of national service as an avenue for addressing many of the country's unmet social, environmental, educational, and public safety needs have revealed new options for enhancing the quality of life for North Carolinians; and

WHEREAS, promoting the capability of North Carolina's people, communities, and enterprises to work collaboratively is vital to the long-term prosperity of this state; and

WHEREAS, building and encouraging community service as an integral part of the formula to our growth as a state and as a nation requires cooperative efforts by the public sector, the private sector, the nonprofit sector, and partnerships among these sectors; and

WHEREAS, a State Commission is necessary to advise and assist in the development of a comprehensive, statewide service plan for promoting volunteer involvement and citizen participation in North Carolina;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The State Commission on National and Community Service ("Commission") is hereby established to encourage community service and volunteer participation as a means of community and state problem-solving; to promote and support voluntary citizen involvement in government and private programs throughout the state; to develop a long-term, comprehensive vision and plan of action for community service initiatives in North Carolina; and to serve as the state's liaison to national and state organizations which support its mission.

Section 2. Membership.

A. All members of the Commission shall be appointed by the Governor. It shall consist of no fewer than 15 and no more than 25 members. The Governor shall appoint four of the Commission members from the Standing Committee on Youth Voice. Not more than 50 percent of the Commission plus one member may be from the same political party. To the extent possible, it shall be diverse in race, ethnicity, age, disability, and gender. Terms shall be for three years and shall be staggered.

B. The Commission shall include:

(1) An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.

(2) An individual with experience in promoting the involvement of older adults in service and volunteerism.

(3) A representative of community-based agencies or community-based organizations within the State.

(4) The Superintendent of the Department of Public Instruction, or his designee.

(5) A representative of local governments in the State.

(6) A representative of local labor organizations in the State.

(7) A representative of business.

(8) At least four individuals between the ages of 12 and 25 who are service providers or recipients in a volunteer or service program.

(9) A representative of the Corporation for National and Community Service described in Section 122(a) of the United States Public Law 103-82 ("P.L."), as a non-voting, ex officio member.

C. The Commission may include:

(1) Members selected from among local educators.

(2) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(3) Representatives of Native American tribes.

(4) Members selected from among out-of-school youth or other "at-risk" youth.

(5) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

D. Not more than 25 percent of the Commission members may be employees of state government, though additional state agency

representatives may sit on the Commission as non-voting, ex officio members.

E. Vacancies among the members shall be filled by the Governor to serve for the remainder of the unexpired term.

Section 3. Officers.

The Officers of the Commission shall be Chair and Vice-Chair. All officers shall be elected by the voting Commission members from among their ranks and shall serve for a term of one year. Vacancies in any offices shall be filled with an election by the Commission for the remainder of the unexpired term.

a. Chair: It shall be the responsibility of the Chair to preside at all meetings of the Commission; to appoint all committee chairs; to assist all committee chairs in the planning of committee activities; to supervise all chairs as to the management of committee plans; to authorize and execute the wishes of the board; and to be an ex officio member of all committees.

b. Vice-Chair: The Vice-Chair shall assist the Chair, and, in the absence of the Chair, perform those duties. The Vice-Chair shall accept special assignments from the Chair and perform other duties as delegated by the Commission.

Section 4. Effect On Other Executive Orders.

The Commission is the successor group to the Governor's Voluntary Advisory Council, formed by Martin Administration Executive Order 139 and amended by Executive Order 185. That Council was disbanded by Executive Order 31, dated October 1, 1993. This Executive Order replaces and rescinds Executive Order 31.

Section 5. Standing Committees.

The Standing Committees shall advise and assist the Commission in carrying out its duties and responsibilities. Committee chairs shall be appointed by the Commission Chair from among Commission members, but the committees' members need not be limited to Commission members. With the exception of the Standing Committee on Youth Voice, the Commission Chair, in consultation with the Committee Chairs, shall name the committees' members. Standing Committees of the Commission shall include:

a. Youth Voice: The Standing Committee on Youth Voice shall consist of 24 members between the ages of 12 and 25. Members shall come from 12 regions of the state and be diverse in gender, race and ethnicity, geographic location, physical ability, and economic and educational background. Its responsibilities shall include out-reach to youth statewide, developing and recommending policies and programs to the Commission, training other young people in the skills necessary to strengthen community service programs as well as bringing the perspective of young people to all Commission discussions and decisions. For the initial term, members of the Standing Committee on Youth Voice will be named by peer selection. Following the initial term, 12 Regional Councils (to be designated by the Commission) will each name two representatives to the Standing Committee. The Standing Committee on Youth Voice shall recommend to the Governor four members to serve on the Commission.

b. Volunteer Recognition: The Standing Committee on Volunteer Recognition shall assist with the implementation



of Governor's awards relating to exemplary volunteer service in the State; work with individual communities to develop local recognition programs; and explore additional opportunities to recognize individuals and organizations addressing community needs through volunteer service.

c. Evaluation: The Standing Committee on Evaluation shall evaluate each program funded by the Corporation for National and Community Service (described in the P.L. 103-82) and state organizations which support the purpose of the Commission to assure their on-going quality.

d. Community Collaboration: The Standing Committee on Community Collaboration shall promote communication and information sharing between state and local private and public initiatives to meet community needs.

e. Resource Development: The Standing Committee on Resource Development shall develop and implement strategies to secure local, state, and federal resources to reinforce, expand, and initiate quality community programs across the state.

f. Training: The Standing Committee on Training will develop and implement strategies for training and technical assistance to community service programs, potential grant applicants and State Commission-funded programs, as well as work towards building service program partnerships statewide.

g. Service Learning: The Standing Committee on Service Learning will act as a liaison between the State Commission, private and public institutions of higher education and the Department of Public Instruction to shape the service

learning state plan and promote service learning in community-based and school-based programs and partnerships across the state.

Section 6. Meetings.

The Commission shall meet at least quarterly. Failure to attend at least 75 percent of called meetings in any calendar year shall result in removal from the Commission. A quorum shall consist of a simple majority of voting members.

Section 7. Duties.

The Commission shall, in the performance of its tasks and functions:

- a. Ensure that its funding decisions meet all federal and state statutory requirements.
- b. Recommend innovative, creative, statewide service programs to increase volunteer participation in all age groups and community-based problem-solving among diverse participants.
- c. Develop and implement a centralized, organized system of obtaining information and technical support concerning volunteerism and community service recruitment, projects, training methods, materials, and activities throughout North Carolina. Share such information and support upon request.
- d. Promote strong interagency collaboration as an avenue for maximizing resources and provide that model on the State level.
- e. Provide public recognition and support of individual volunteer efforts and successful or promising private

sector initiatives and public/private partnerships which address community needs.

f. Stimulate increased community awareness of the impact of volunteer services in North Carolina.

g. Utilize local, state, and federal resources to reinforce, expand, and initiate quality service programs.

h. Assist the Governor's Office of Citizen Affairs in the planning and implementation of volunteer programs.

i. Serve as the state's liaison and voice to appropriate national and state organizations which support its mission.

j. Prepare a national three-year service plan for the State which follows state and federal guidelines.

k. Prepare the financial assistance applications of the State under Sections 117B and 1301 of the P.L. 103-82.

l. Assist in the preparation of the application of the North Carolina Department of Public Instruction for assistance under Section 113 of the P.L. 103-82.

m. Prepare the State's application under Section 130 for the approval of service positions such as the national service educational award described in Subtitle D of the P.L. 103-82.

n. Make technical assistance available to enable applicants for assistance under Section 121 to plan and implement service programs; and to apply for assistance under the federal service laws such as the P.L. 103-82.

o. Assist in the provision of health care and child care benefits under Section 140 to participants in national

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER No. 49  
FISCAL NOTES ON ADMINISTRATIVE RULES  
AFFECTING LOCAL GOVERNMENTS

WHEREAS, GS 150B-21.4(b) requires analysis of proposed administrative rules for their affect on local revenues; and

WHEREAS, the actions of state agencies can have profound but unanticipated effects on local governments' budgets; and

WHEREAS, the Governor of North Carolina has pledged to work closely with local elected officials to forge a strong state-local government partnership; and

WHEREAS, the Governor wishes to establish a procedure to provide local governments with broader opportunities for input on proposed administrative rules which may impose additional costs at the local level; and

WHEREAS, all state agencies must take into account, as they develop administrative rules affecting local governments, the potential costs of implementing these rules;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Role of the Governor's Office.

The Office of the Governor shall:

1. Implement a process to ensure any rule submitted for the Governor's review includes a fiscal note on its effects on local government; and
2. Request the Office of Administrative Hearings revise its form OAH-2A to provide additional information on the fiscal effects of proposed rule actions on local governments.

Section 2. Responsibility of All State Agencies.

1. Each department shall designate a staff member reporting directly to the department head who will be responsible for the following:

a. Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note as required by G.S. 150B-21.4(b) has been completed; and

b. Consultation with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to assure that these organizations have received copies of all fiscal notes prior to the publication of proposed rules in the North Carolina Register.

2. Each department is directed to consult with representatives of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities and other appropriate organizations to determine which local governments and local agencies could be affected by any proposed rule action.

3. Each department is directed to consult with an appropriate sample of city and/or county managers (with assistance available from the North Carolina Association of County Commissioners and the North Carolina League of Municipalities) at the earliest possible point in analyzing the fiscal effect of proposed rule actions and in developing and drafting rules and rule changes that:

a. Could require local governments including counties, cities, school administrative units and other local agencies funded by or through any of these to carry out additional or modified responsibilities, or

b. Could increase the cost of providing or delivering a public service funded in whole or in part by any local government, or

c. Could otherwise affect the expenditures or revenues of a unit of local government.

4. Each department is directed to send a copy of the final fiscal note to the Office of State Budget and Management for compilation as noted in Section 4 of this Order.

5. Each department is further directed to compile a schedule of the administrative rules and amendments expected to be proposed during the next state fiscal year. The schedule shall be provided to the Office of State Budget and Management in a manner proposed by



OSBM and within a time frame which will permit the Budget Office to provide this information to the Governor, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, as is specified in Section 4 of this Order.

Section 3. Minimizing Effects of Rules on Local Budgets.

Recognizing that rules imposed after the adoption of local budgets can significantly affect local fiscal condition, the departments are hereby directed to consider the timing for implementation of proposed rules as part of the preparation of the fiscal note.

In cases where the computation of costs in the fiscal note indicates the proposed rule action will disrupt the budget process as set out in Article 3 of Chapter 159 of the General Statutes (the Local Government Budget and Fiscal Control Act), the departments are hereby directed to establish the effective date of the rule or action as:

July 1 of the fiscal year following publication in the North Carolina Register, but not less than six months following such publication.

However, should conditions beyond the control of state departments compel a department to adopt rules with other than the July 1 effective date, the department shall include a statement with the fiscal note explaining the reason(s) for the deviation from this standard.

Section 4. Duties of the Office of State Budget and Management.

The Office of State Budget and Management shall be responsible for the following duties:

1. Compiling an annual summary of the projected fiscal impact on local governments of state administrative rules adopted during the preceding fiscal year;
2. Compiling from the departments the schedules of anticipated rule actions for the upcoming state fiscal year; and,
3. Providing the Governor, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with a copy of the above mentioned summary and schedules no later than March 1 of each year.

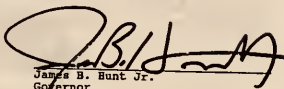
Section 5. Effect on Other Executive Orders.

All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

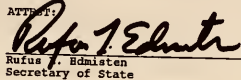
This order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the  
17th day of May, 1994.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 50  
NORTH CAROLINA SPORTS DEVELOPMENT COMMISSION

WHEREAS, the Department of Commerce is charged with the duty of promoting and assisting in the total economic development of North Carolina; and

WHEREAS, sporting events represent an expanding market with positive economic effects; and

WHEREAS, it is the duty of the Sports Development Office to develop and promote efforts to recruit sporting events, sporting franchises, and training centers to North Carolina; and

WHEREAS, an advisory commission to advise, assist, and support the Sports Development Office and the Department of Commerce in matters involving sports development initiatives is necessary.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Establishment.

There is hereby established the North Carolina Sports Development Commission.

Section 2. Membership.

The Governor shall appoint the members of the Commission. The Commission shall consist of 20 members. Members shall be representatives of sports agencies and organizations, government

entities, the business community, or individuals who have an interest in sports development.

Section 3. Terms.

All members shall serve four year terms at the pleasure of the Governor.

Section 4. Officers.

The Governor shall designate a Chair from the membership to serve at his pleasure. The Commission shall elect any other officers it deems necessary. Vacancies in any office shall be filled for the unexpired term by the original appointing authority.

Section 5. Meetings.

The Commission shall meet at least quarterly. A quorum shall consist of a majority of the current Commission membership.

Section 6. Administrative Support and Expenses.

(a) The staff of the Sports Development Office shall provide administrative support to the Commission. A Sports Development Office staff member shall serve as Administrator to the Commission. Permanent records of all Commission business shall be maintained in the Sports Development Office and shall be the responsibility of the Administrator.

(b) Members of the Commission shall receive travel and subsistence expenses, when available, from Department of Commerce funds, pursuant to N.C.G.S. 138-5.

Section 7. Duties and Powers.

The Commission shall perform such duties as assigned by the Governor. It shall have the following specific duties, powers, and functions:

- (1) assist the Sports Development Office in planning and implementation of sports development initiatives;

Done in the Capital City of Raleigh, North Carolina, this the  
1st day of June, 1994.

  
James B. Hunt Jr.  
Governor



ATTEST:  
  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 51 NORTH CAROLINA FILM COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

The North Carolina Film Council is hereby established.

### Section 2. Duties.

The Council shall have the following duties and functions:

- (a) Advise the Governor on matters that would enhance the likelihood of the film industry choosing North Carolina for filmmaking.
- (b) Advise the Secretary of Commerce and the Film Division in the Department of Commerce on film-making activities within North Carolina.
- (c) Serve as a forum for film-making concerns and recommendations relating to the film industry in North Carolina that would include, but not be all inclusive of, the following:
  - (1) Compile a database registry of locations within North Carolina that would be potential sites for filmmaking;
  - (2) Develop the financial capability of North Carolina to support projects with local financing of the film industry;

- (3) Develop a support network for production activities relating to the film industry;
- (4) Develop a manual for the use of local governments and municipalities detailing supportive activities that would facilitate filmmaking in their communities;
- (5) Assist in the support and coordination of the activities of local film commissions in North Carolina;
- (6) Provide advice on projects directly assigned by the Governor to the Council;
- (7) Assist with recruitment of the film industry to select North Carolina sites for filmmaking; and
- (8) Develop an annual report on the economic impact of the film-making industry in North Carolina, along with recommendations to increase the filmmaking activities within North Carolina.

Section 3. Membership.

The Council shall consist of 25 voting members who shall be appointed by the Governor as follows:

- (a) Five representatives of the film industry within the state representing acting, production, directing, producing, and film studio management.
- (b) Five representatives of business and industry.
- (c) Three representatives of state or local government.
- (d) Twelve at-large members.

Section 4. Terms of Membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years and nine members to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses, when available, from Department of Commerce funds, pursuant to N.C.G.S. 138-5.

Section 7. Officers.

The Chair and Vice Chair of the Council shall be appointed by the Governor. The term of office of the Chair and Vice Chair shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet at least three times yearly and at other times at the call of the Chair or upon written request of at least ten of its members.

Section 9. Staff Assistance.

The Department of Commerce shall provide clerical support and other services required by the Council.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the

10th day of June, 1994.

  
James B. Hunt Jr.  
Governor



ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 52  
AMENDING EXECUTIVE ORDER NUMBER 9 CONCERNING  
THE COMMISSION FOR A COMPETITIVE NORTH CAROLINA

By the authority vested in me as Governor by the laws and  
Constitution of North Carolina, IT IS ORDERED:

Section 2 of Executive Order Number 9 is hereby amended to  
read:

Section 2. Membership.

The Commission shall consist of up to 55 members appointed by  
the Governor. The membership may include representatives of the  
private sector, the nonprofit sector, local government, and the  
North Carolina General Assembly.

Section 3. Effect on Other Executive Orders.

Executive Order Number 40, dated March 21, 1994 is hereby  
rescinded.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 10th day of

June

, 1994.



James B. Hunt Jr.  
Governor

ATTEST:

Rufus L. Edmisten  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 53  
NORTH CAROLINA INTERAGENCY COUNCIL  
FOR COORDINATING HOMELESS PROGRAMS

WHEREAS, the problem of homelessness denies a segment of our population their basic human need for adequate shelter; and

WHEREAS, several State agencies offer programs and services for homeless persons; and

WHEREAS, to combat the problem of homelessness most effectively, it is critical that these agencies coordinate program development and delivery of essential services.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The North Carolina Interagency Council for Coordinating Homeless Programs (the "Interagency Council") is hereby established.

Section 2. Membership.

The Interagency Council shall consist of the Deputy Secretary of the North Carolina Department of Human Resources and twenty-three additional members who shall be appointed by the Governor from the following public and private agencies and categories of qualifications:

- (a) One member from the Department of Administration.
- (b) One member from the Housing Finance Agency.
- (c) One member of the Office of State Planning.
- (d) One member of the Department of Community Colleges.
- (e) One member of the Department of Crime Control and Public Safety.
- (f) One member of the Department of Cultural Resources.
- (g) One member of the Department of Commerce.
- (h) One member of the Department of Environment, Health and Natural Resources.
- (i) One member of the Department of Human Resources.
- (j) One member of the State Board of Education or a member from the Department of Public Instruction.
- (k) One member of the Department of Insurance.
- (l) One member of the Department of Transportation.
- (m) One local government official.
- (n) Two members from a non-profit agency concerned with housing issues and the homeless.
- (o) Two members from a non-profit agency concerned with the provision of supportive services to the homeless.
- (p) Two homeless or formerly homeless persons.
- (q) Two members from the private sector.
- (r) One member of the North Carolina Senate.
- (s) One member of the North Carolina House of Representatives.

Section 3. Chair and Terms of Membership.

The Deputy Secretary of the Department of Human Resources shall serve as Chair of the Interagency Council during his or her term of employment in that position. Initial terms of membership for the

other members of the Interagency Council shall be staggered with eleven members serving two years and eleven members serving three years. Each appointment thereafter shall be for a term of two years.

Section 4. Meetings.

The Interagency Council shall meet quarterly and at other times at the call of the Chair or upon written request of at least (5) five of its members.

Section 5. Functions.

(a) The Interagency Council shall advise the Governor and Secretary of the Department of Human Resources on issues related to the problems of persons who are homeless or at risk of becoming homeless, identify available resources throughout the State and provide recommendations for joint and cooperative efforts in carrying out programs to meet the needs of the homeless.

(b) The Interagency Council shall set short term and long term goals and determine yearly priorities.

(c) The Interagency Council shall submit an annual report to the Governor, by November 1, on its accomplishments.

Section 6. Travel and Subsistence Expenses.

Members of the Interagency Council shall receive necessary travel and subsistence expenses from the Department of Human Resources in accordance with the provisions of G.S. 120-3.1 or 138-5.

Section 7. Staff Assistance.

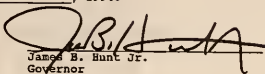
The Office of Economic Opportunity of the Department of Human Resources shall provide administrative and staff support services required by the Interagency Council.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the

20th day of June, 1994.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# NUMERICAL INDEX TO SENATE AND HOUSE BILLS

## 1993 GENERAL ASSEMBLY EXTRA SESSION 1994

Ratified Number refers to the Session Law Chapter number except when preceded by an R, in which case it refers to the Resolution number.

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Suggestions for Use: Local legislation appears under the name of the particular county or locality. Legislation that amends or repeals another session law appears under "Laws Amended or Repealed." Legislation containing appropriations appears under "Appropriations" or the name of the agency.

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